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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909

No. 11.

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THE STATE OF LOUISIANA *EX REL.* LOUIS A. HUBERT, RECEIVER, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED AUGUST 8, 1907.

(20,822.)

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IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

No. 16402.

STATE OF LOUISIANA *ex Rel.* LOUIS A. HUBERT, Receiver, Plaintiff in Error,
versus
MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS, Defendants in Error.

Charles Louque, and Rouse & Grant for Plaintiff in Error.
Frank B. Thomas for Defendants in Error.

Writ of Error to the Supreme Court of the State of Louisiana from the Supreme Court of the United States of America, Returnable at the City of Washington, D. C., within thirty days (30) from the eighteenth day of July, A. D. 1907.

TRANSCRIPT OF RECORD.

1 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Civil District Court for the Parish of Orleans.

Petition for Mandamus, Affidavit, and Order.

Filed April 23rd, 1906.

Civil District Court, Parish of Orleans, Division "C."

No. 79161.

STATE *ex Rel.* L. A. HUBERT, Receiver,
vs.
MAYOR & COUNCIL OF THE CITY OF NEW ORLEANS.

To the Honorable the Civil District Court for the Parish of Orleans:

The petition of the State of Louisiana *ex rel.* Louis A. Hubert, herein acting as the duly qualified Receiver of the late Board of Metropolitan Police; respectfully represents:

That a final judgment has been rendered by the Honorable the Supreme Court of this State against the City of New Orleans, condemning the said City to pay your relator in his official capacity of Receiver of the Board of Metropolitan Police, the sum of one hundred and twenty three thousand, four hundred and seventy-five 57/100 Dollars ($123,475.57) with 5% per annum interest from

April 6th, 1904, until paid and costs of the lower Court; as the whole more fully appears by the record No. 73,173 of this Honorable Court;

That under Act No. 5 of the extra session of 1870, the District Court is prohibited from issuing a writ of *fieri facias*, to en-
2 force the payment of said judgment;

Relator avers that even if said writ could be issued, the City of New Orleans has no money nor property liable to seizure to satisfy said judgment, and said writ of *fieri facias* would be returned *nulla bona*, by the sheriff;

Relator further avers that under the terms of said Act No. 5 of the extra session of 1870, your Relator on the 29th day of March, 1906, caused a copy of the petition, answer and judgment, certified to be correct and mentioning that said judgment is final and executory, to be registered in the office of the City Comptroller;

That your relator made a demand on the City Comptroller for the issuance of a warrant on the City Treasurer for the payment of said judgment but the City Comptroller refused said request on the ground that there was no funds set apart for the payment of said judgment;

Relator further avers that there are not now, and will not be any funds, available out of which the City Council of New Orleans can make an appropriation for the payment of said judgment, the available funds not being sufficient to meet the necessary expenses of the government;

That the City Council has made, and will make no appropriation to pay said judgment;

Relator avers that the basis on which said judgment was rendered consisted of a contract and Statutory obligation imposed upon the City of New Orleans, to levy, collect and pay over to the Board of Metropolitan Police a sum sufficient to pay the quota apportioned to said City under the Act of 1868 of the Legislature, creating the Board of the Metropolitan Police and Amendatory acts;

That said contract and Statutory obligation existed during the years 1869 to 1877 inclusive, and that the obligation thus continuing the fund which should have been provided, constituted but one fund for the payment of the obligation thus created;

That the maximum rate of taxation authorized by law,
3 during said period of time was not levied and the duty to levy enough taxes to satisfy such obligation formed part of said contract, and Statutory obligation and has not been performed, and Relator is entitled to the levy of a special tax for the payment of said judgment;

That the rate of taxation during the different years from 1868 to 1872 was unlimited, as regards the Board of Metropolitan Police, the same being fixed by the Act of 1868, p. 91, under section 29—which empowered and directed the City Council—annually, to order and cause to be raised and collected by taxation upon the estates, real & personal subject to taxation, according to law within said City, the sum of Money, annually estimated, and appropriated as the share of said City of the Police expenses;

That in the year 1872; by act No. 73, p. 127—section 15, the levy of the City Tax, and the Police tax was limited to 1¼% as follows "a tax for the current City expenses, including Police, and exclusive of interest and schools. This tax not to exceed in any one year 1¼% upon the assessed value of real, personal and mixed property;

That during the years 1873-1874-1875-1876-1877, the limit of taxation was not reached by a larger margin than the one mill tax which is necessary to pay and satisfy the judgment herein rendered;

Wherefore relator prays that a Mandamus issue herein ordering the City of New Orleans through its Mayor Martin Behrman, and Council to levy, collect and pay over to your Relator in his capacity as Receiver of the Board of Metropolitan Police, a special tax of one mill on the assessed values of the City of New Orleans, both real and personal or so much thereof as may be necessary to satisfy the judgment herein rendered in principal, interest and costs or show cause why said writ should not be made peremptory on such day as this Honorable Court may fix and your relator prays for general relief.

(Signed) CHAS. LOUQUE,
ROUSE & GRANT, *Att'ys.*

4 *Affidavit.*

Louis A. Hubert, being duly sworn says that all the facts and allegations of the foregoing petition are true and correct.

(Signed) C. A. HUBERT,
Receiver Board Metropolitan Po.

Sworn to and subscribed before me this 23rd Day of April, 1906.

(Signed) J. M. QUINTERO,
[SEAL.] *Notary Public.*

Order.

Let as within prayed for the Mayor and City Council of New Orleans, show cause on Friday May 4th, 1906, at 11 o'clock A. M. why the writ of Mandamus prayed should not issue.

New Orleans April 23rd, 1906.

(Signed) JOHN ST. PAUL, *Judge.*

Writ of Mandamus. Sheriff's Return Thereon.

Issued April 24th, 1906; Filed May 1, 1906.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

The State of Louisiana to the City of New Orleans, through its Mayor, Honorable Martin Behrman:

No. 79161.

STATE *ex Rel.* L. A. HUBERT, Rec'r,
vs.
MAYOR & COUNCIL OF THE CITY OF NEW ORLEANS.

You are hereby commanded, in the name of the State of Louisiana and of the Civil District Court for the Parish of Orleans, to comply with the demand of the Relator herein, as contained in the petition, copy of which accompanies this writ and is made a part hereof, or show cause to the contrary on Friday the 4th day of May, at eleven o'clock A. M.

5 Witness the Honorables T. C. W. Ellis, Fred D. King, Geo. H. Theard, John St. Paul and W. B. Sommerville, Judges of our said Court, this 24th day of April in the year of our Lord, one thousand nine hundred and six and in the one hundred and thirtieth year of the Independence of the United States.

(Signed) L. W. GUNTHER,
[SEAL.] *D'y Clerk.*

Received Tuesday April 24, 1906, and on the 24th day of April 1906 I served a copy of the within Writ of Mandamus and accompanying petition and Order on the City of New Orleans defendant herein by personal service on Martin Behrman its Mayor.
Returned same day.
Sheriff's fees $3.00.
(Signed) C. M. GOSS,
Deputy Sheriff.

Continued.

Extract from Minutes, Division "C."

FRIDAY, *May* 11, 1906.

Present: Honorable John St. Paul, Judge.
Owing to the researches to be made to enable Respondents to plead and on motion of Frank B. Thomas Esq. attorney for Respondents, this application for mandamus was continued to Friday June 1st, 1906.

Continued.

Extract from Minutes, Division "C."

WEDNESDAY, *August* 16, '06.

Present: Honorable John St. Paul, Judge.

This application for Mandamus came up for hearing on this day—Present: Chas. Louque, Esq., Att'y for Relator; Frank B. Thomas Esq., Att'y for Respondent—and after hearing pleadings and the evidence the matter was continued to Friday August 24th 1906, at eleven o'clock A. M. for argument of Counsel.

6 *Exception and Answers City of New Orleans.*

Filed August 16th, 1906.

Civil District Court, Parish of Orleans, Division "C."

No. 79161.

STATE *ex Rel.* L. A. HUBERT, Rec'r,
vs.
MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS.

Now into Court through undersigned counsel, comes the Mayor of the City of New Orleans, and the members of the Council of the City of New Orleans and for return to Relator's petition except thereto for the reason that it fails to disclose a legal cause of action, and this application is made prematurely.

And in the event that said exception be dismissed and reserving all their rights thereunder for further return to the rule issued herein;

Your Respondents admit Relator has obtained a judgment against the City of New Orleans for the sum of One Hundred and Twenty-three Thousand Four Hundred and Seventy-five 57/100 ($123.-475.57), with 5% per annum interest thereon from April 6th, 1904.

Respondents also admit that under Act No. 5 of the extra session of 1870, the District Court is prohibited from issuing a writ of *fieri facias* to enforce the payment of said judgment.

Respondents admit that Relator caused to be registered in the office of the City Comptroller a few weeks ago a copy of the petition, answer and judgment, and a certificate that said judgment is final.

Respondents admit that Relator made demand on the City Comptroller for the issuance of a warrant on the City Treasurer for the payment of said judgment and that the City Comptroller refused the request for the reason there was no fund at present set apart for its payment.

Respondents deny that there will not be any funds available out of which the City Council can make any appropriation for the payment and especially aver that under the terms of Act 5 of the

7 extra session of 1876, the City Council in the past has paid all judgments registered with the City Comptroller and

that it is the purpose of Respondents to comply with the terms of said Act, and that in due course Relator's judgment can and will be paid by appropriations made from the collection of the taxes levied in the regular manner and order.

Respondents deny that the basis on which said judgment was rendered consists of a contract and statutory obligation, but aver that the suit was one for money claimed to be collected by the City and which it retained, and for which the Relator claimed he had the rights to distribute among the creditors of the Board of Metropolitan Police.

Your respondents show that the City of New Orleans cannot be compelled by mandamus to levy a special tax to pay Relator's judgment for the reason that Section 1 of Act 5 of the extra session of 1870, forbids any Court in the State of Louisiana to issue a writ of mandamus against any official of the City Government to compel payment of any claim against the City of New Orleans.

Respondents further show that the Courts cannot create a power to levy a tax by mandamus and the City of New Orleans has already exercised its full authority to levy a tax and is prohibited from exceeding such limitation.

Respondents deny that the City has left any unexercised authority of taxation during the years 1869 to 1877, inclusive, for police purposes, and for further answer shows that under Act 74 of 1868, and amendatory acts that the Board of Metropolitan Police prepared annually an estimate of all of its expenses for all purposes for each of said years and notified the City of its apportionment and that upon the receipt of such notice the City of New Orleans levied a tax to meet the amount thereof. Section 29 of said Act reading as follows:

"That the common Council of the City of New Orleans, etc. are hereby respectfully empowered and directed annually to order and cause to be raised and collected by the tax upon the Estates
8 (real and personal) subject to taxation according to law within the said City and towns the sums of money as aforesaid annually estimated and apportioned as the share of such cities or parishes of the said total expenses of the Metropolitan District."

Your Respondents show that said tax according to said law was so levied annually and out of the funds so raised the City annually appropriated in its budget the amount of its said apportionment.

That its power to levy a tax for the years 1868 to 1872, was not unlimited as the amount of said apportionment was the limit and it was fully exercised as aforesaid.

Wherefore Respondents pray that Relator's application for a writ of mandamus be refused at his costs.

(Signed) SAMUEL GILMORE,
City Attorney.
FRANK B. THOMAS,
Of Counsel.

Martin Behrman, Mayor of the City of New Orleans, being duly sworn did depose and say, that all the allegations of the above and

foregoing return are true and correct to the best of his knowledge and belief.

(Signed) MARTIN BEHRMAN, *Mayor.*

Swonr to and subscribed before me this 11th day of May 1906.

(Signed) BERNARD C. SCHIELDS,

[SEAL.] *Notary Public.*

Civil District Court, Division "C".

No. 79161.

STATE *ex Rel.* LOUIS A. HUBERT

vs.

MAYOR & COUNCIL OF THE CITY OF NEW ORLEANS.

Testimony and Notes of Evidence, Taken in Open Court, Before the Hon. John St. Paul, Judge Presiding, on the 16th Day
9 *of August, A. D. 1906, on Behalf of the Relator.*

Appearances.

For the Relator: Chas. Louque, Esq.
For the defendants: Messrs. Sam'l L. Gilmore & Frank B. Thomas

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Reported by A. E. Oliveira, Steno.

Civil District Court, Division "C".

No. 79161.

STATE *ex Rel.* LOUIS A. HUBERT

vs.

MAYOR & COUNCIL OF THE CITY OF NEW ORLEANS.

Testimony and Notes of Evidence, Taken in Open Court, Before the Hon. John St. Paul, Judge Presiding, on the 16th day of August, A. D. 1906, on behalf of Relator.

Appearances.

For the Relator: Messrs Chas. Louque & Rouse, Grant & Grant.
For respondents: Messrs Sam'l L. Gilmore, City Attorney; Frank B. Thomas, Esq.

10 On Application for a Writ of Mandamus.

By Mr. THOMAS: If your Honor please, I now file an exception of no cause of action, based upon the terms of Act 5 of 1870.

By the COURT: The exception of no cause of action is overruled. Let the case be tried on its merits.

By Mr. THOMAS: To which ruling of the court, Mr. Thomas excepts, and reserves this note in lieu of a formal bill of exceptions.

By Mr. LOUQUE: Relator offers in evidence the whole of the record No. 73,173 of the docket of the Civil District Court, together with the report of the experts, and the judgment of the Supreme Court of Louisiana in that case.

AGREEMENT: It is agreed that in case of an appeal that the record just referred to by counsel for relator, will be used in the form of the transcript now on file in the Supreme Court.

JAMES MCRACKEN, sworn by the Court, testified as follows:

Direct examination by Mr. LOUQUE:

Q. Mr. McRacken, what position do you occupy in the City of New Orleans at present?

A. President of the City Council.

Q. What position did you occupy from 1900 to 1904?

A. Vice President of the City Council.

Q. Vice President?

A. Yes sir.

Q. You are Chairman of the Budget Committee?

A. Yes sir.

Q. During that period of time?

A. Yes sir.

Q. So since 1900 you have been connected directly with the city of New Orleans up to the present date?

A. Yes sir.

11 Q. Are you well acquainted with the affairs of the City of New Orleans?

A. Well, to some extent.

Q. During that time did you have occasion to prepare *dub*gets for the City of New Orleans?

A. Yes sir.

Q. How many budgets did you prepare?

A. Four or five.

Q. In the budgets that you prepared, did they pan out all right and pay off the debts on the budget of expenses?

A. Yes sir.

Q. And were they within the revenues of the city of New Orleans?

A. Yes sir.

By the COURT:

Q. When you say debts, Mr. McRacken, what am I to understand; am I to understand that you mean no back debts were paid in the regular budget?

A. No sir; I answered that question imagining that Mr. Louque intended to mean if all of the expenditures made by the Council in its budget, for operating expenses, were paid.

Q. The back debts that the City paid, were paid otherwise than out of these budgets?

A. Well the city had paid very little back debts within the last

five or six years out of the taxes received; but they have paid a few minor debts, but nothing of any consequence.

By Mr. LOUQUE:

Q. Well, Mr. McKracken, is there any means in the city of New Orleans at present, in her regular budget of paying $135,000.00 of debt?

A. At this present moment?

Q. Yes sir.

A. Nor sir, because the budget of this year has been made.

Q. Well, is there any expenses of the government that could be curtailed from the budget that has been made?

12 A. Not that I know of.

By Mr. THOMAS: Are you talking about the present budget?

By Mr. LOUQUE: I asked him is there any expenses of the government that could be curtailed from the budget that has been made. I asked him whether there is any money of the city of New Orleans, that could be appropriated for the payment of back debts.

By Mr. THOMAS: You never asked him that.

By Mr. LOUQUE:

Q. Answer that question, Mr. McRacken?

A. Not that I know of.

Q. Within the last six years that you have been connected with the government of the city, have any of the old debts been paid in any of the budgets that have been made?

By Mr. THOMAS: If your Honor please, he is asking Mr. McRacken something that will be almost impossible for Mr. McRacken to tell.

By Mr. LOUQUE: I am getting out of him that the city has not paid old debts.

By the WITNESS: Now, what do you mean by "old debts" Mr. Louque?

Q. Prior to 1880.

By Mr. THOMAS: In what form do you mean?

By Mr. LOUQUE: By judgment.

By the WITNESS: Yes, some of them were paid.

By Mr. LOUQUE:

Q. To any considerable extent?

A. Well, that is a matter of record, I believe; I forgot the amount, but Mr. Thomas, I fancy to say, might refresh my memory on that; that developed in the Post Office case.

By Mr. THOMAS:

Q. We paid them?

A. Yes, but he asks me the amount we paid of the judgments that were properly recorded.

Q. Under Act 5 of 1870.

A. I am not familiar with that part of it.

ADMISSION.—It is admitted by relator that all judgments registered with the City Comptroller under the terms of Act
13 No. 5 of 1870, were paid in the due course of administration of the affairs of the city of New Orleans.

By Mr. LOUQUE: What do you mean by that, Mr. Thomas?

By Mr. THOMAS: I mean by due administration, it was paid out of funds derived by the regular tax levy made by the city of New Orleans, and as provided by special statute.

By Mr. LOUQUE:

Q. Mr. McRacken, out of what fund were those judgments paid?

A. I am not prepared to answer that, but all that is of record and there is an ordinance bearing on the subject, I think.

Q. I understand from Mr. Font that those judgments were paid out of the surplus revenues of what was left of 1895, 1896 and 1897, and by borrowing some money?

A. Yes sir; that is why I say I am not prepared to answer how the total amount was realized, because it was realized in two or three different ways, and not imagining that I was going to be asked these questions, I didn't go into the record, but that is a matter that is very easily found out.

Q. Was the amount somewhere around fifty thousand dollars?

A. If my memory serves me right, it was in the neighborhood of fifty thousand or sixty thousand dollars.

Q. Do you know whether the judgment of Mr. Jackson was paid by levy of special tax?

A. Yes. The City of New Orleans levied a special tax for the payment of that judgment.

Q. The judgment amounted to some sixty thousand dollars?

By Mr. THOMAS: No sir, it amounted to over a hundred thousand dollars.

By the WITNESS: It was by order of the United States Court, through a mandamus against the City Council.

By Mr. LOUQUE:

Q. I understand you to have said that no judgment was paid in the budget, since you have been in the City Council; is that right?

A. No sir, there has not been that I recollect, outside of
14 those judgments which you spoke of a moment ago. Mr. Louque, you mean, I believe, before they were taken up in bulk, whether we made at any time provision for any special judgment; not to my recollection.

Q. Before this time, have the budgets been made to pay any other judgments, except these specials that I have mentioned?

A. Not that I know of, sir.

Cross-examination by Mr. THOMAS:

Q. Do you know if there are any other judgments?

A. I can't say, sir.

Q. On file?

A. No sir, I don't know.

Q. It has never been called to the attention of the Council?

A. Not to my knowledge.

Q. At the time these judgments were paid, that Mr. Louque has been referring to, there were no further judgments rendered against the city that were final and on file in the comptroller's office?

A. I am not the Chairman of the Budget Committee now, Mr. Thomas, and if any claims have been filed within the last two years or a year and a half, I don't know of them, not being a member of that Committee.

Q. But the tendency of the City Council since you have been a member, has been towards making some provision for a settlement of the City's just debts?

A. I have taken the position that any just debt and legal debt due by the City of New Orleans ought to be paid.

Q. Are the revenues of the City of New Orleans increasing or decreasing?

A. They are increasing.

By Mr. LOUQUE:

Q. How about the expenses are they increasing or decreasing?

A. Increasing.

Q. Do they increase in the same proportion as the revenues?

By Mr. THOMAS: I am not through with the witness.

By the COURT: Was there any special reason for paying
15 these judgments of which you spoke a moment ago?

By Mr. THOMAS: There was no special reasons, except they contended that these judgments acted as a lien on certain property belonging to the city of New Orleans. As a matter of fact, the defense in that case would have been maintained and carried out to a final judgment, but the city voluntarily went in and paid; but the city of New Orleans was not forced to pay those judgments, on account of the sale of the Post Office site.

By the COURT:

Q. I understand that the city of New Orleans was about to sell certain property; these judgments were recorded, and those persons who held the judgments claimed that they bore upon the property. The city of New Orleans filed suit to cancel the lien, and in the meantime all the parties arranged their differences by the city taking up their judgments.

By the WITNESS: That is correct to some extent. I will state as Chairman of the Budget Committee, every year in making up budgets, we had people applying for the payment of their judgments. We could not see our way clear to make provision, and when the Post office case came up, that is where these gentlemen came and forced the city of New Orleans to provide for the payment of these judgments, and that is the time they dug up everything, solely for the purpose of clearing the Post Office site, to allow the United States Government to get the property clear, and if it had not been for the Post Office site, the judgments would not be paid today.

By Mr. THOMAS: That is volunteered on you- part, Mr. Reken?

A. I asked the Judge if he wanted a statement of facts.

By Mr. THOMAS: If your Honor please, I don't think that should be in the record; those are just opinions of Mr. McRacken, and therefore would not be good evidence, and I ask that it be stricken out of the record.

By the COURT: The objection is overruled. I believe that the party plaintiff has the right to show the situation of affairs, and to lay before the upper court, if he can the probability or improbability of any judgment being paid out of the regular tax, to the end, that the upper court may then have before it a full situation of
16 affairs, when it renders its judgment.

By Mr. THOMAS: If your Honor please, I object on the ground that this is an *im*pression *on* opinion, and not competent evidence. To the ruling of the court, I except and reserve this note in lieu of a formal *fill* of exceptions.

By Mr. THOMAS:

Q. Mr. McRacken, as a matter of fact, in preparing budgets, have you gone back over any of the old budgets of the city of New Orleans, other than those prepared during your tenure of office?

A. For what purpose?

Q. For the purpose of showing what had been done in those budgets?

A. Yes, I did.

Q. As a matter of fact, haven't you seen in the budgets of past years, appropriations made by the Council to cover judgments registered with the Comptroller under Act No. 5 of 1870?

A. I cannot say "yes" or "no." I did not look into that part of them. I think I qualified my answer. To my recollection, all of the budgets I made, I don't recollect of having provided for any one judgment. In one instance we provided for the payment of some outstanding certificates for $1900.00, and if we provided for the payment of any judgment, it must have been a very small amount, because I recollect that Committee took the stand that they didn't have the money wherewith to meet the requirements, and therefore didn't take up the question.

By Mr. LOUQUE:

Q. Mr. McRacken, are not the expenses of the government increasing at the same time as the revenues increase, or do they increase in greater proportion?

A. That is hard to answer. I will say that while the revenues are steadily increasing, the expenses are steadily increasing also, but in what ratio I am unable to answer, because as the city develops and grows you want more lights, and more police, and more garbage service etc.

Q. But the expenses, do they increase in proportion to the revenues as they increase?

17 A. In my opinion, fully.

By the COURT:

Q. Let's sum this up in one way. The city of New Orleans in preparing a budget begins as a rule, by making an appropriation for carrying on the City's regular business?

A. Yes sir; by anticipating the revenues and adding them up and making a total.

Q. You first get your budget of estimated revenues?

A. Yes sir.

Q. And then proceed to make up your budget of expenditures?

A. Yes sir.

Q. And after providing for your contract obligations, you then provide for the administration of the city's affairs, its police, streets and public buildings, its officers and all that?

A. Yes sir.

Q. Well, I want to ask you what has been your experience since you have been connected with the city of New Orleans, as to the surplus or deficit of your regular revenues as compared to your estimates?

A. If you will allow me to explain how we do. We take up the *the* budget of revenues, estimated revenues, then we provide for all of the Legislative Acts, salaries, &c.; then we have demands from the various Boards, Police Board, Fire Board, and the different Boards, and that is where the wrangle comes in, in trying to do what was right, and in the four years that I have been there, after we would close our budget, we would find it absolutely necessary in the month of January to start out with a loan of anything from thirty thousand dollars or up, so as to provide for the deficit in the budget for the police or fire departments. Sometimes we cut the fire department and the police department, and borrow that money the following month; but at no time do we give any of those departments, the amounts that they demand or request us to do, because we could never see our way clear to do it.

By Mr. LOUQUE: Counsel for relator offers in evidence the
18 Comptroller's report for the year 1905, and for the month of December of the rate of taxation levied by the city of New Orleans for the years 1868, 1869, 1870, 1871, 1873, 1874, 1875, 1876 & 1877, as contained in the printed report at pages 206, 207 & 208. This offer is made for the purpose of showing what taxation has been levied, and how the taxation has been divided for each of the years from 1868 to 1877 inclusive.

F. C. FONT, sworn by the Minute Clerk, testified as follows:

Direct examination by Mr. LOUQUE:

Q. Mr. Font, you are the Chief Clerk of the comptroller's office?

A. No sir, I am principal bookkeeper.

Q. Have you been Chief Clerk of the Comptroller's office?

A. No sir.

Q. What position do you occupy in the Comptroller's office?

A. Principal bookkeeper, keeper of accounts.

Q. How long have you been there?
A. Something over ten years.
Q. Well, you are experienced in the accounts that have been kept by the Comptroller's office?
A. Yes sir.
Q. Were you one of the experts to run over the collections made by the City of New Orleans for account of the Metropolitan police?
A. Yes sir.
Q. Did you make a report to Judge Ellis?
A. I did, sir.
Q. Can you remember, Mr. Font, the figures that were reported?
A. No sir.
Q. If I were to show you a printed copy, would you?
A. I don't know if I would, Mr. Louque, unless you showed me.

By Mr. THOMAS: If your Honor please, this is burdening up the record by examining Mr. Font about the figures; the record is the only evidence that can show that, and I object to it.

By Mr. LOUQUE: I am not going to burden the record; of course the record shows what judgment was rendered.

By Mr. THOMAS: Sure.

19 By the COURT: You have introduced the whole transcript in that case?

By Mr. LOUQUE: Yes sir.

By the COURT: Then there is no use of going any further into that.

Q. Mr. Font, during the time that you have been connected with the comptroller's office as chief clerk, have you any recollection——

By Mr. THOMAS: He has never been chief clerk.

By Mr. LOUQUE: Mr. Font, is it within your recollection that any of the judgments rendered against the City of New Orleans, have been paid out, or the amounts appropriated in any budget by the City Council?
A. Yes sir.
Q. Can you specify which and how much each?
A. Yes; the Council used to appropriate every year in its budget, a certain amount to pay judgments rendered under Act 5 of 1870, and that obtained, as far as I can recollect, until about 1897; I think, either in that year or the following year it was discontinued, and ever since it has been discontinued, but it was their practice to dedicate a certain amount for that purpose.
Q. How much, a thousand dollars a year?
A. Yes sir.
Q. And how much judgments were there?
A. I can't say.
Q. Over a hundred thousand dollars?
A. Yes sir.
Q. In 1897 they discontinued that practice?
A. Yes. We took up something over two hundred and sixty odd thousand dollars by a bond issue; we were prepared to take up all

of the judgments, but certain parties would not accept the terms, and their judgments remained on record.

Q. Do you know why?.

A. Yes, they wanted a hundred per cent.

Q. And you were paying that?

A. Sixty eight per cent. which was acceptable to them.

20 Q. As a general rule, or I mean to say as a matter of fact, from the year 1900 up to the present time, has there been any money in the city treasury which could have been set aside in any of these budgets to pay old judgments?

A. You mean in the budget as made?

Q. Yes.

A. No, sir, not in the budget as made.

Q. Do you know as a matter of fact the expenditures of the government were obliged to be curtailed by the Budget Committee?

A. No sir, I do not.

Q. From the requisitions made by the heads of the department?

A. No, I do not.

Q. Do you know whether the amounts that have been applied satisfy the judgments. What year was that?

A. The last batch was in 1904.

Q. In 1904 was it appropriated by any budget?

A. They were not appropriated by any budget.

Q. What were the circumstances under which those judgments were paid?

A. The Council called upon the Comptroller for a report of any available balances, and we reported a surplus of three years, 1895, 1896 & 1897. Those surpluses were used as far as they would go, and the difference was made up by a loan from the Fiscal Agent, and any surplus revenues accruing, were pledged to pay it.

Q. What was the reason for paying these judgments?

A. Of my own knowledge, I don't know, but common report was on account of clearing the Post Office site.

Q. Suppose you were a judgment creditor of the city of New Orleans for $135,000.00 today, and you had to wait until they budgeted an amount to pay you, have you any idea when you would be paid?

By Mr. THOMAS: If your Honor please, I object, because that is simply a matter of opinion, and it is going beyond the realm of human nature.

By the COURT: Ask him what took place in the past, and the court will draw its own conclusions as to what will happen in the future.

21 By Mr. LOUQUE: I have asked him that already.

By the COURT: The objection is maintained.

To which ruling of the court Mr. Louque excepts, and reserved this note in lieu of a formal bill of exceptions.

Cross-examination by Mr. THOMAS:

Q. Have you had any occasion to look into the amount of taxation exercised by the City of New Orleans, between the years, including the year 1868, to the present time, with the idea in mind of

ascertaining how much unauthorized power of taxation was left in the city of New Orleans?

A. Yes, I did figure it out at your request.

Q. Now, in figuring it out, you took what as a starting point; first, the power of taxation?

A. Yes, power of taxation.

Q. Given to the city?

A. Yes sir.

Q. And then the amount levied for general purposes?

A. Yes sir.

Q. And then the amount of judgment tax and special taxes?

A. Yes sir.

Q. Did you find, taking the statutory taxation, together with the special taxation, that there was any unauthorized power to tax, left in the city during those years, from 1868 to the present time?

A. I did not.

Q. In other words, the city exhausted all the power of taxation that it had?

A. Yes, sir.

By the COURT:

Q. It had exhausted its taxation for all those years?

A. Yes sir.

By Mr. LOUQUE:

Q. How did you examine to see about the tax of 1873?

A. The amount of authorized taxes, I took from the ac-
22 counts; the amount of real expenses was taken from this report.

By Mr. THOMAS:

Q. Didn't I tell you that the Act of 1872 provided for one and a quarter as the limit of taxation?

A. Yes sir.

By Mr. LOUQUE: For what?

A. Taxes authorized.

Q. For what?

A. For city expenses.

By Mr. THOMAS:

Q. City and Police expenses?

A. Yes sir.

By Mr. LOUQUE:

Q. For the year 1873, what was the city and police?

A. 1.07535 mills.

Q. The Act of 1872 says: One and a quarter for the city and police, exclusive of the schools and other purposes?

A. Yes sir.

By Mr. THOMAS: There is no question about that.

By the WITNESS: I took five years of taxes levied, and five years of taxes authorized.

Q. If you say that the taxes were exhausted in those five years, you are mistaken in that fact?

A. What exhausted the taxes of those years was the subsequent levy.

Q. By what?

A. By ordinance; for instance, in 1880 there was a special judgment tax of .3210; on 1881, there was a special judgment tax, .2840.

Q. You say there was a special tax; what was that special tax for?

A. Judgments; it is called in the budget Special Judgment tax.

By the COURT:

Q. These extra levies were made after those five years entirely?

A. Yes sir, afterwards.

23 Q. Then go on and give each year first, or give the total of the five years.

By Mr. THOMAS: There is no dispute your Honor, about the amount of taxes that were levied.

A. The taxes levied for five years amount to 5.1765% of taxes levied; the authorization for those five years was 6.250%, leaving unused during those five years 1.0735%; those five years were the years 1873, 1874, 1875, 1876 & 1877, and were the only years in which the power of taxation was not exhausted. In subsequent years, beginning with 1880, the years 1880, 1881, 1882, 1885 & 1903 there was a levy of special judgment tax, to the amount of 2.9067%; in other words, she is having a leeway of 1.0735. She has used 2.9067.

By Mr. LOUQUE:

Q. Now, Mr. Font, when you say that the city has levied a tax—you say for instance, in 1880 that the city levied a special tax; what was that for?

A. That was for a special judgment tax.

Q. For what judgment?

A. Well, there are hundreds of them; the Ordinance Book will show six or eight pages of them, and it will take a week to read them; they were judgments ordered by the courts, and for which the city levied this .3210 mills.

Q. Do you know for what years these judgments were rendered, on what contracts?

A. No sir, I cannot say without going through the whole record.

Q. Can you testify whether these judgments were rendered on contracts for 1868 and 1869, and when?

A. No, I cannot testify on what those judgments were rendered.

Q. You don't know whether those judgments were rendered on contracts outside of the years of 1868 and 1877?

A. I cannot say.

Q. And your testimony now applies to all of these levies?

A. Yes sir; all I can say is that these taxes were levied by ordinances of the City Council predicated on different years.

24 By the COURT:

Q. Do you or not know whether or not these judgments were taxes to be levied as taxes of any given year, or whether they were levied generally?

By Mr. THOMAS: I know they were general; for instance, the Jackson Judgment.

By Mr. LOUQUE:

Q. Mr. Font, this judgment that we are trying to have paid by levy of a special tax, calls for $135,000.00; what rate of per cent. would be necessary to pay this judgment, allowing a certain sum as a margin for non-collection?

A. It would depend upon what the assessment is.

Q. Do you know what the present assessment is?

A. No, I haven't got the present assessment; this book goes to 1905.

Q. What would it take?

A. One mill would be more than enough.

By the COURT:

Q. One mill would — more than sufficient?

A. Yes sir.

By Mr. LOUQUE:

Q. Mr. Font, I understand you then to say that you are unable to testify for what years these judgments on which you base your assumption that the limit of the taxation has been reached, were rendered?

A. I would not answer that without looking at the ordinances. I read the ordinances, but I don't recollect them now; I scanned them, and there is probably a whole day's reading in them.

ADMISSION.—It is admitted that in the years 1869, 1870, 1871, that the City of New Orleans, budgeted for, appropriated, levied a tax for, and collected the amount called for by the apportionment served upon the city by the Board of Metropolitan Police. This admission is not to be understood as saying that they turned the same

25 over to the Police Board.

By Mr. THOMAS:

Q. Mr. Font, do you know how long the judgment rendered in the case of Louis A. Hubert, Receiver, *vs.* Mayor & Council of the City of New Orleans, has been on file or registered with the City Comptroller?

A. I cannot tell you the date, Mr. Thomas.

By Mr. LOUQUE: I have that in the petition.

NOTE.—Testimony closed; case continued to Friday next, August 24th, 1906, for argument.

26 *Submitted.*

Extract from Minutes, Division "C."

FRIDAY, *August* 24, '06.

Present: Honorable John St. Paul, Judge.

After hearing argument of Charles Louque, Esq., Attorney for Relator and of Frank B. Thomas, Esq., Attorney for Respondents, this application for Mandamus was submitted and taken under advisement.

Judgment.

Civil District Court, Parish of Orleans, Division "C."

No. 79161.

STATE *ex Rel.* L. A. HUBERT
vs.
MAYOR AND CITY COUNCIL OF NEW ORLEANS.

In this case submitted for adjudication, the Court considering the pleadings, the evidence and the law applicable thereto and for the reasons orally assigned, in open Court on this day.

It is ordered, adjudged and decreed that the rule herein issued be discharged and the relator's application for Mandamus is dismissed, as in case of non-suit, at his cost.

Judgment read in open Court Monday November 5th, 1906.

Judgment signed in open Court November 12th, 1906.

(Signed) JOHN ST. PAUL, *Judge.*

Motion for New Trial.

Filed November 9th, 1906.

Entered on Minutes of Same Date.

Civil District Court, Division "C."

No. 79161.

STATE *ex Rel.* HUBERT, Receiver,
vs.
MAYOR & COUNCIL OF THE CITY OF N. O.

On motion of Rouse & Grant and Chas. Louque of counsel for L. A. Hubert, Receiver of the Board of Metropolitan Police, and on suggesting to the Court, that the judgment herein rendered is contrary to law and to the evidence, for the following reasons:

1. That the corporation of the City of New Orleans, was acting as the legal agent of the Board of Metropolitan Police, in levy-
27 ing, collecting and paying over to your mover, the Metropolitan Police tax ordered to be levied, collected and paid over to the Board; as the whole more fully appears by the acts of 1868 No. 74; 1869 p. 78 1870 p. 213;

2. That until she had levied, collected and paid over such collection, her legal obligation so to do, constituted a contract between the said City of New Orleans and the Board of Metropolitan Police;

3. That the rate of taxation existing at the time, formed a part of this contractual obligation; and relator is entitled to the levy of a special tax to the full limit existing at the time of her contract, in the enforcemen of this obligation;

4. That the levy of the taxes was a part of the obligation resting on the City of New Orleans, under the Acts of 1868 and 1869 and when said tax had once been levied and collected, the City was then holding the same as an agent or trustee of the Board of Metropolitan Police;

5. That under the Act of 1870 p. 213, is was made the duty of said agent to pay over said collections and this duty formed a part of the contractual relations, then existing;

6. That the Relator is entitled, by reason of the fact that the City did not perform her part of the obligations resting on her, of paying said amount so collected, to the enforcement of his contract by the levy of a special tax which will bring the total to the amount she was authorized to levy;

7. That the remedy sought by Relator, is not to force the City of New Orleans to levy the same tax twice, but to fulfill her obligation to pay, which it is admitted she has never done;

8. That the object of the law in creating the contract between the City of New Orleans and the Board of Metropolitan Police, was to obtain and realize the funds necessary to pay the Police and under the terms of the judgment herein rendered this object would be defeated, if the mere levy and collection, without payment to the
28 Board, were considered a fulfillment of the City's obligation.

9. That the payment of the apportionment by the City of New Orleans, to the Board, without any levy and collection would have been a fulfillment of the obligation of the City towards the Board; that it was not the levy and collection which was the gist of the law, but the payment and satisfaction of the apportionment;

10. That Relator is entitled to the full enforcement of the contract by the enforcement of a special levy of taxes to the amount of the limit existing at the time of the existence of the contract;

11. That the judgment rendered against the City of New Orleans, forming the basis of this application, affirms the contractual and trust relations existing, and is final.

It is therefore ordered by the Court that the City of New Orleans do show cause on — why a new trial should not be granted herein.

Service accepted.

(Signed) FRANK B. THOMAS,
Of Counsel for City of New Orleans.

N. O. Nov. 9, '06.

New Trial Refused & Judgment Signed.

Extract from Minutes, Division "C."

MONDAY, *November* 12, '06.

Present: Honorable John St. Paul, Judge.

For the reasons orally assigned in open court on this day, the Court being of opinion that all the grounds urged in the rule for new trial have been previously considered and that the judgment herein rendered should remain undisturbed.

It is ordered that Relator's Rule be discharged and his application for a new trial is refused at his cost.

And accordingly, the judgment in this case read and rendered in open Court on the 5th day of November 1906, was signed on this day in open Court.

29 *Motion for Suspensive Appeal.*

Filed November 14th, 1906.

Entered on Minutes of Same Date.

Civil District Court, Parish of Orleans.

No. 79161.

STATE *ex Rel.* L. A. HUBERT, Receiver,
vs.
MAYOR AND COUNCIL OF NEW ORLEANS.

On motion of Charles Louque and Rouse & Grant attorneys for Louis A. Hubert, Receiver of the Metropolitan Police and on suggesting to the Court that there is error to his prejudice in the final judgment herein rendered and that he desires to take a suspensive appeal to the Supreme Court of this State;

It is ordered by the Court that a suspensive appeal be granted herein to mover from the judgment herein rendered, signed on the 12th of November 1906, returnable to the Supreme Court of this State on the third Monday in November 1906, on Plaintiff and Relator giving bond conditioned as the law directs, in the sum of One Hundred Dollars.

Appeal Bond.

Filed November 14th, 1906.

Know all men by these presents, That we Louis A. Hubert Receiver of the Board of Metropolitan Police as principal and Charles Louque as surety, are held and firmly bound unto Thomas Connell, Clerk of the Civil District Court for the Parish of Orleans, his suc-

cessors, executors, administrators and assigns, in the sum of One hundred Dollars, for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents sealed with our seal, and dated in the City of New Orleans, on this 14th day of November in the year of our Lord one thousand nine hundred and six.

Whereas, the above bounden principal has this day filed a motion of appeal from a final judgment rendered against him in the
30 suit of State *ex rel.* Hubert *vs.* Mayor and Council of the City of New Orleans, No. 79161 of the Civil District Court for the Parish of Orleans, on the — day of — 190- and signed on the 12th day of November, 1906.

Now the condition of the above obligation is such, That the above bound principal shall prosecute his appeal; and shall satisfy whatever judgment may be rendered against him or that the same shall be satisfied by the proceeds of his estate real or personal; if he be cast in the appeal; otherwise that the said Surety shall be liable in his place.

(Signed) C. A. HUBERT, [SEAL.]
Receiver of the Board of Metropolitan Police.
(Signed) CHAS. LOUQUE. [SEAL.]

Signed, sealed and delivered in the presence of
—— ——.
—— ——.

"Extract from the City Comptroller's Report, Offered in Evidence."

31 1866.

Valuation of real estate	$100,238,840
Valuation of Personal property	26,335,925
Total valuation	126,574,765

Ratio of Taxation on Every One Hundred Dollars.

City tax on real estate		65
City tax on personal property	1.30	
Consolidated tax on real estate		65
Tax for interest on railroad bonds	20	20
Totals	1.50	1.50

1867.

Valuation of real estate	$109,037,260
Valuation of personal property	29,984,969
Total valuation	139,022,129

Ratio of Taxation on Every One Hundred Dollars.

City tax on real estate		72
City tax on personal property	1.32	
Consolidated tax on real estate		60
Tax for interest on railroad bonds	18	18
Totals	1 50	1 50

1868.

Valuation of real estate	$107,913,834
Valuation of personal property	22,959,612
Total valuation	130,873,446

Ratio of Taxation on Every One Hundred Dollars.

City tax on real estate		45
City tax on personal property	1 05	
Consolidated loan tax on real estate		60
Tax for interest on railroad bonds	20	20
Tax for one million loan	25	25
Totals	1 50	1 50

1869.

Valuation of real estate	$106,259,295
Valuation of personal property	21,683,486
Total valuation	127,942,781

Ratio of Taxation on Every One Hundred Dollars.

City tax on real estate		23
City tax on personal property	85	
Consolidated tax on real estate		62
Tax for interest on railroad bonds	16	16
Tax for one million loan	49	49
Metropolitan police tax	75	75
Park tax	12½	12½
Totals	2.37½	2.37½

32 1870.

Valuation of real estate	$116,056,581
Valuation of personal property	23,791,623
Total valuation	139,848,204

Ratio of Taxation on Every One Hundred Dollars.

City tax on real estate		70
City tax on personal property	1 49	
Consolidated tax on real estate		60
Tax for interest on railroad bonds	01	20
Tax for one million loan	25	25
Tax for City park	12½	12½
Tax for Metropolitan Police	75	75
Totals	2 62½	2 62½

Remitted by Ord. 870, adopted May 31st, 1871, 62½ or ⅝ of 1 per cent.

1871.

Valuation of taxable property $138,426,211

Ratio of Taxation on Every One Hundred Dollars.

City expense tax	78
Police tax	59½
School tax	28
Park tax	12½
Interest tax	97
Total	2 75 per cent.

1873.

Valuation of taxable property $135,891,300

Ratio of Taxation on Every One Hundred Dollars.

City expense tax	75 10
Police tax	32
School tax	25
Park tax	12 50
Interest tax	1 55 40
Total	3 00 per cent.

1874.

Valuation of taxable property $130,913,356

Ratio of Taxation on Every One Hundred Dollars.

City expense tax	68
Police tax	44 50
School tax	25
Park tax	12 50
Interest tax	1 00
Total	2 50 per cent.

33 1875.

Valuation of taxable property $119,288,504

Ratio of Taxation on Every One Hundred Dollars.

City expense tax	51
Police tax	49 50
School tax	25
Park tax	12 50
Interest	1.12
Total	2 50 per cent.

1876.

Valuation of taxable property $119,045,515

Ratio of Taxation on Every One Hundred Dollars.

City expense tax	57
Police tax	42
School tax	25
Premium bond tax	26
Total	1 50 per cent.

1877.

Valuation of taxable property $109,669,889

Ratio of Taxation on Every One Hundred Dollars.

City expense	60
Premium bond tax	40
Police tax	30
School tax	20
Total	1 50 per cent.

34 *Certificate.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, William B. Murphy, Deputy Clerk of the Civil District Court for the Parish of Orleans, do hereby certify that the foregoing thirty-two (32) pages do contain a true, correct and complete Transcript of all the proceedings had, documents filed and evidence adduced upon the trial of the cause wherein State *ex rel.* L. A. Hubert, Rec'r is plaintiff and Mayor & Council of the City of New Orleans are defendants instituted in this Court and now in the records thereof under the No. 79161 of the Docket thereof, Div. C., the Honorable John St. Paul, Judge. Pamphlet, Comptroller's Report, offered in evidence by relator, filed August 24, 1906, is forwarded in Original.

In testimony Whereof, I have hereunto set my hand and affixed the impress of the seal of said Court, at the City of New Orleans on this Twentieth day of November in the year of our Lord, one thousand nine hundred and six and in the one hundred and thirty-first year of the Independence of the United States of America.

[SEAL.] (Signed) W. B. MURPHY,
Deputy Clerk.

35 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Civil District Court for the Parish of Orleans.

Petition and Account.

Filed April 6th, 1904.

Civil District Court, Division "A."

No. 73173.

LOUIS A. HUBERT, Receiver,
vs.
CITY OF NEW ORLEANS.

To the Honorable the Civil District Court for the Parish of Orleans:

The Petition of Louis A. Hubert who resides in New Orleans, herein acting as the duly qualified Receiver of the Board of Metropolitan Police, respectfully represents:

That the City of New Orleans a corporation duly created by law, is justly and truly indebted unto your petitioner, in his official capacity, in the full sum of Four hundred and eleven thousand eight hundred and eight four 89/100 dollars with legal interest from April 3rd, 1880; for this to-wit:

That the Board of Metropolitan Police was — corporation duly created by law, for the maintenance of order in the Metropolitan District, composed of the Parish- of Jefferson, St. Bernard and Orleans;

36 That each of said Parishes was under the law creating the Metropolitan Police Districts, directed to levy a special tax for the maintenance of the Board of Metropolitan Police and payment of its expenses;

That in accordance and in obedience to the laws on this subject, the City of New Orleans levied the special taxes provided by law and has now in its Treasury, or should have, the amount above stated; being the collection of said special tax;

That your petitioner annexes a detailed statement of the collections so made for the various years during which the tax was levied, which amounts, although collected by the City of New Orleans, were never paid to the Board of Metropolitan Police nor to its representatives;

That your petitioner also annexes a detailed statement of the amount of interest of said taxes collected by the Civil Sheriff and retained by him by consent of the City of New Orleans as expressed in ordinance 6851 A. S. hereto annexed and made part hereof; see Jewel Digest p. 531 which ordinance did not relieve the City of its liability to petitioner;

That according to the detailed list of the collections so made by the Sheriff and retained by him, the same amounts to the sum of twelve thousand six hundred and seven 05/100 dollars;

That your petitioner's predecessor R. F. Harrison, Receiver of the Board of Metropolitan Police heretofore obtained judgment against the City of New Orleans for certain amounts collected, but none of said amounts are included in the foregoing statement and in the amount now claimed.

That the Board of Metropolitan Police owes large amounts of money and the whole of said indebtedness due by the City is necessary to pay said indebtedness;

37 That a judicial demand was made against the City of New Orleans on the 3rd of April, 1890 and she refused to pay and denied all indebtedness, and still refuses to pay;

Wherefore petitioner prays that the City of New Orleans be cited hereto and after due proceedings be condemned to pay petitioner the sum of Four hundred and eleven thousand eight hundred and eighty four 89/100 dollars with legal interest from April 3rd, 1890 and all costs of suit and for general relief, &c.

(Signed) CHAS. LOUQUE, *Att'y.*
(Signed) ROUSE AND GRANT,
Of Counsel.

Statement of Metropolitan Police Tax and Interest Collections Attached to Plaintiff's Petition.

1869	Tax Collections from 31, March 1877 to 24, May, 1890 equals 6/19 of $9,422.00 or.....	$2,975.37
1870	Tax Collections from 31, March 1877 to 24, May 1890 equals 2/7 of $17,859.98 or.....	5,102.85
1870	Int. Collections from March 31, 1877 to 24 May 1890, equals 2/7 of $85.22 or.....	24.35
1871	Tax Collections from 31, March 1877 to 24 May 1890, equals 119/550 of $47,177.01 or.....	10,207.39
1871	Int. Collections to 24 May, 1890, equals 119/550 of $91,794.55 or.....	19,861.00
1873	Tax Collections from 31 March 1877, to 24 May 1890, equals 32/300 of $52,744.94 or.....	5,626.12
1873	Int. Collections to 24 May, 1890, equals 32/300 of $149,488.75 or.....	15,945.46
38		
1874	Int. Collections to 24, May 1890 equals 89/500 of $109,796.10 or	19,543.70
1875	Int. Collections to 24 May 1890, equals 99/500 of $62,134.63 or	12,302.65
1876	Int. Collections to 24 May 1890, equals 42/150 of $33,800.88 or.....	9,464.25
1877	Tax Collections from March 22 to March 31, 1876.	44,332.47
1877	Tax Collections from March 31, 1877, to 31 Jan. 1880.....	236,655.03
1877	Tax Collections from January 31, 1880 to July 2, 1880, equals 3/13 of $2,205.02 or.....	508.85
1877	Tax Collections from 5 July 1880 to 24 May 1890, equals 1/3 of $38,454.03 or.....	12,818.01
1877	Int. Collections from 22 March to 31st March, 1877, equals 1/5 of $2,083.26 or.....	416.65
1877	Int. Collections from 31, March 1877, to May 24, 1890, equals 1/3 of $17,468.46 or.....	3,493.69
		$399,277.84

Interest on Metropolitan Police Tax Collected by Sheriff and Retained by Him, with the Consent of the City of New Orleans, under Ordinance 6851, *A. S.*

		.595	
1871	$6,766.08	2.750	$1,466.09
		.32	
1873	6,438.97	3	686.82
		.445	
1874	11,812.77	2.500	2,102.67
		.495	
1875	15,600.87	2.500	3,088.97
		.42	
1876	11,888.47	1.50	3,328.77
39		.50	
1877	9,668.67	1.50	1,933.73
			$12,607.05
As per previous statement			399,277.84
Total			411,884.89

Answer.

Filed May 23rd, 1904.

Division —, Civil District Court.

No. 73173.

LOUIS A. HUBERT, Receiver,
vs.
CITY OF NEW ORLEANS.

Now into Court through undersigned counsel comes the City of New Orleans, made defendant herein, and for answer to plaintiff's petition denies all and singular the allegations set forth therein except what may be hereinafter specially admitted.

And for further answer defendants show that the Metropolitan Police Board herein represented by plaintiff, was organized in accordance with the act 74 of 1868 and that all the City taxes for the support of said Board were levied in accordance with said act.

That respondent complied with all the duties imposed upon it, by the acts of the legislature relative to said Board and levied said taxes,

and collected same to the best of its ability and the amount so collected paid over to the proper authorities.

Respondent further shows that for all police taxes up to the year 1877, collected, it has made full account to said Board of Metropolitan Police, and the Receivers appointed thereto and same has been the subject of special adjudications by the Supreme Court of
40 this State, and respondent denies indebtedness therefor of any kind.

Respondent further specially pleads payment thereof and *res adjudicata.*

For further answer respondent shows that about three-fourths of the demand made by plaintiff relate to and effect the taxes levied in the year 1877 as will more fully appear by the statement annexed to plaintiff's petition.

Now respondent shows that the plaintiff herein is without authority of any kind to sue for, to collect or to receive police taxes levied in and for the year 1877 for the reason that the limit of his authority extends and covers only those police taxes levied during the years 1869 to 1876 inclusive, as will more fully appear by the order rendered in the suit entitled State *ex Rel* Brittin *vs.* City of New Orleans as reported in the 106 La. report 469.

And respondent further shows that by act #53 E. S. approved March 31st, 1877, the act creating the Board of Metropolitan Police was repealed and abolished and the said Board and the Police Force organized by it went out of existence and thereby failed to render any service as such to the inhabitants of this City or respondent, and that your respondent was forced to organize and support a Police Force of its own to protect its inhabitants during the year 1877, and was compelled to and had the legal right to use whatever police taxes it collected for that year in support of said police so organized and for that further reason it not owing said taxes to said Metropolitan Police Board, the plaintiff herein has no right to sue for or recover the police tax or any part thereof levied in 1877.

Wherefore defendant prays that there be judgment maintaining its defenses set forth hereinabove and that plaintiff's suit be dismissed and for costs of Court and for general relief.

(Signed) FRANK B. THOMAS,
Ass't City Att'y.

41 *Supplemental Answer and Exception.*

Filed January 16th, 1905.

Civil District Court, Division "A."

No. 73173.

LOUIS A. HUBERT, Receiver,
vs.
CITY OF NEW ORLEANS.

Now comes the defendant, the City of New Orleans, through undersigned counsel, and with leave of Court first obtained, and reserving

the benefit of and insisting upon all exceptions and defenses heretofore filed, for further cause of exception respectfully shows:

That on April 21st, 1885, R. F. Harrison then Receiver of the Board of Metropolitan Police brought suit against defendant in this Honorable Court for the same cause of action stated in plaintiff's petition, alleging liability of defendant for Metropolitan Police Taxes levied under the legislative acts organizing the Metropolitan Police Force.

That in said suit there was a final determination of said cause of action by the judgment of the Supreme Court of this State, rendered on May 11, 1888, and reported in the 40 A.509, fixing defendant's liability to the Board of Metropolitan Bank in the sum of $30944.94, thirty thousand nine hundred and forty four 94/100 dollars which amount was duly paid by defendant and defendant now pleads said judgment in bar of plaintiff's demand.

And fur further cause of exception, defendant shows that plaintiff's petition failed to disclose a legal cause of action.

Defendant further pleads the prescription of ten years to plaintiff's demand.

And should these pleas and exceptions be overruled and
42 not otherwise, then for further answer defendant avers that since the payment of the judgment mentioned and set forth, all Metropolitan Police taxes collected subsequent to this payment by it has been paid to petitioner.

Reiterating all the allegations of the answer filed herein by defendant and for the reasons herein and therein set forth, defendant prays that this suit be dismissed and for costs and general relief.

(Signed) SAMUEL L. GILMORE,
City Attorney.
FRANK B. THOMAS,
Of Counsel.

STATE OF LOUISIANA:

Civil District Court, Parish of Orleans, Division "A."

No. 73173.

LOUIS A. HUBERT, Receiver, etc.,
vs.
CITY OF NEW ORLEANS.

Testimony and Notes of Evidence on Behalf of Plaintiff in the Above Entitled and Numbered Cause, Taken in Open Court on the 17*th Day of January,* 1905, *Before the Hon. T. C. W. Ellis, Judge.*

Appearances.

For Plaintiff: Chas. Louque, Esq., and Messrs. Rouse and Grant.
For Defendant: Frank B. Thomas.

By Mr. LOUQUE: Plaintiff offers in evidence the record No. 14004 of the Civil District Court for the Parish of Orleans, entitled
43 State *ex Rel* Brittin *vs.* The City of New Orleans, and we reserve the right, instead of having to copy the portions of that

record, to use what is already in the Supreme Court in the different suits which have been appealed and which are before the Supreme Court.

By Mr. THOMAS: I believe the rules of the Supreme Court permit that.

By Mr. LOUQUE: I also offer in evidence the record, entitled R. F. Harrison, Receiver, *vs.* The City of New Orleans, No. 10,079 of the Supreme Court.

I offer in evidence the record in the case of Benjamin *et als.* against The City of New Orleans, No. 142 of the Circuit Court of Appeals of the United States for the 5th Circuit, No. 11983 of the Circuit Court for the Eastern District of Louisiana, marked "P 1".

By Mr. THOMAS: What is your purpose in offering that?

By Mr. LOUQUE: With the privilege of using the printed document, and, in case of appeal, to transmit the original.

By Mr. THOMAS: What is your purpose in offering that?

By Mr. LOUQUE: My purpose is to show the plea of prescription you have filed has been interrupted, and to show what the liabilities of the Metropolitan Police funds amount to.

By Mr. THOMAS: I object to that. Statements that have been offered in a case that has never been tried on the merits are not admissible.

By the COURT: I think for the purpose of showing interruption in prescription the record could be filed. Any other purpose it may be offered for the objection would go to the effect. It would show a record of this kind existed at the time of the filing. I receive it for the purpose of showing interruption in prescription. If it will do so, and any other objection stated I will refer to the merits.

44 By Mr. THOMAS: To which ruling of the Court counsel for Defendant excepts and reserves this note in lieu of a formal bill of exceptions.

By Mr. LOUQUE: I offer in evidence the record of the case of Louis A. Hubert, Receiver, *vs.* The City of New Orleans, No. 1251 of the United States Circuit Court of Appeals, for the 5th District, and No. 11,899 of the Circuit Court of the United States for the Eastern District of Louisiana, marked "P2."

By Mr. THOMAS: What is your purpose in offering that?

By Mr. LOUQUE: The same thing on that as on the other.

By Mr. THOMAS: I make the same objection.

By the COURT: Same ruling.

By Mr. THOMAS: Same Bill of Exceptions reserved.

By — ROUSE: In connection with the last offer, particularly the following portions of the record in the case of R. F. Harrison Receiver, *vs.* City of New Orleans, No. 11,899 of the docket of the Circuit Court of the United States for the Eastern District of Louisiana, commencing on page 1 of the printed record of the Circuit Court of Appeals. Also the citation issued from said Circuit Court in said cause on the 3rd day of April, 1890, with the return thereon, found on pages 3 and 4 of said printed docket. Also the Answer of the City of New Orleans, filed on the 16th day of April, 1890, in said cause, found on page 4 *et seq.* of said record, and the statement filed

with said answer, printed on page 26 etc. of said record. Also amended and supplemental petition in said suit No. 11,899 of Harrison, Receiver, *vs.* City of New Orleans, filed May 31, 1890, commencing on page 9 of said printed record. Also the citation issued in that cause on the 31st day of May, 1890, and the return thereon, found on page 12 of said printed record. Also the Answer of the City of New Orleans, filed September 23, 1890, in said cause,
45 commencing on page 14 of said printed record. Also the statement filed with said Answer, in said cause, on September 23, 1890, commencing on page 18 of the printed record and continuing to page 23, inclusive. Also, we specially offer, introduce and file in evidence, the supplemental and amended petition filed on November 17, 1902, being a petition of the present plaintiff herein, who was admitted by said Circuit Court of the United States as plaintiff in lieu of Harrison, deceased, commencing on page 28 of the printed transcript, including also the statement filed therewith and as part of said petition, on pages 30 and 31 of the printed record. Also the citation issued November 17, 1902, and the return thereon, found on pages 32 and 33 of said record. Also the judgment, enlarging the powers of the Receiver, in the case of State *ex rel.* A. Brittin *et als. vs.* City of New Orleans, rendered by the Civil District Court of the Parish of Orleans, Division E, in that cause, found on page 62 of said printed record.

By Mr. THOMAS: Any statements made of amounts of taxes collected, that have not been verified by some authorized officers, that are offered for the purpose of proving any indebtedness I object to, if it has the effect of proving indebtedness against me, without my being able to criticize them or cross-examine the witness who prepared them, or the officer who made them. I have a right to have him examined here in Court, and I object to the attempt being made to prove in this way any indebtedness on the part of the City of New Orleans to the Metropolitan Police Board.

By the COURT: That objection would go to the effect of the testimony after it is all in; it would be no ground for refusing it to be filed. If it does not reach to the extent of fixed proof, as a matter of course, it would have no effect.

By Mr. THOMAS: To which ruling of the Court counsel
46 for defendant excepts and reserves this note in lieu of a formal bill of Exceptions.

By the COURT: I expressly refrain from passing on the objection interposed by counsel for the City, and I refer all the objections to the merits to be passed upon when the entire record is made up.

By Mr. LOUQUE: I offer in evidence the Comptroller's Report embracing a detailed statement of the receipts and expenditures of the City of New Orleans, from January 1st to June 30th, 1897, marked "P3," and I specially offer in evidence pages 174 and 175 of said Report. The said offer is a printed pamphlet, and it is agreed that the printed pamphlet shall be used in the original in case of an appeal, instead of copying the same into the transcript.

I also offer in evidence the Budget of the City of New Orleans for the year 1877—Budget of Liabilities—marked "P4."

By Mr. THOMAS: What is your purpose in offering this?

By Mr. LOUQUE: To show the ordinance budgeted a certain amount for the Metropolitan Police fund.

By Mr. THOMAS: I object, on the ground the Metropolitan Police Tax of 1877 is beyond any scope or authority that the Receiver has been given in this case, and therefore the evidence would be irrelevant, if admitted.

By the COURT: I transfer that objection to the merits, and will consider it with the merits.

By Mr. THOMAS: To which ruling of the Court counsel for defendant excepts, and reserves this note in lieu of a formal bill of Exceptions.

By Mr. LOUQUE: I offer in evidence the ordinance No. 6851, Administration Series, as contained in Jewell's Digest, published in 1882, at pages 530 and 531.

By Mr. THOMAS: The same objection, with the same ruling by the Court and same Bill of Exceptions reserved.

47

Mr. VITAL TUJAGUE, being first sworn by the Court, deposes and says:

Direct examination by Mr. LOUQUE:

Q. Mr. Tujague, what position did you occupy up to the last election?

A. That of Comptroller, City of New Orleans.

Q. Now, since the last election, what position do you occupy?

A. Chief Clerk in the Treasurer's Office, City of New Orleans.

Q. Chief Clerk?

A. Yes, sir.

Q. Did you receive notice of the *subpœna duces tecum* to bring the books in Court?

A. Yes, sir.

Q. Well, the books that you have brought in Court this morning, are they all the books which contain the accounts in question in this case for the collection of the Metropolitan Police Tax from 1869, 1870, 1871, 1873, 1874, 1875, 1876 and 1877?

A. I brought the ledgers accounts showing the collection of taxes for those years.

Q. Are there any books that are missing?

A. From those dates of the collections?

Q. Yes, from the 31st of March, 1877, to May 24, 1890?

A. No, sir; the books are here, but I haven't got the books of 1869, when the collections were first started, to 1870.

Q. No; we are not claiming that?

A. I know, but that is what I say; but I have the books from 1877 to 1890.

Q. We are only interested in the collections made from the 31st of March, 1877, to the 24th of May, 1890, because we have received and collected subsequent to those dates and prior to those dates. So you say the books are here then?

48

A. The ledgers, yes sir.

NOTE.—This statement made by Mr. Tujague is the return to the *subpœna duces tecum.*

Q. The answers you are giving are they in relation to the Treasurer's or Comptroller's books?
A. The Treasurer's books.
Q. In relation to the Comptroller's books?
A. I know nothing.
Q. You do not know?
A. No.
Q. Who hunted for the books this morning?
A. In the Comptroller's Office?
Q. Yes?
A. I don't know, sir; I have no knowledge.

By Mr. THOMAS:

Q. What is Mr. White's position?
A. Chief Clerk in the Comptroller's office.
Q. He superintended the bringing of the books down?
A. I suppose so. I don't know; I just sent my books down in the same wagon he did.

By Mr. LOUQUE: Both Mr. Font and Mr. Aikens inform me that some of the books that contain some of these accounts are missing.

By Mr. THOMAS: The object of the City was to comply fully with the *subpœna duces tecum.* If there are any books covered by the *subpœna duces tecum* that are not brought to court I will request you to specify what they are and I will certainly see they are brought. What are the books, and what books are missing on the return? Just specify and I will have them brought down, if they can be brought down.

49 By Mr. LOUQUE: Ledger D and Ledger C of the Comptroller's Office containing taxes from 1869 to 1873——

Q. Is there such a book as that in the Comptroller's office?
A. I couldn't say; I never looked; I have no idea.
Q. During the time you were Comptroller do you remember such a book as that?
A. No, sir; I never had occasion to look them up, sir.
Q. Do you know what position Mr. Font occupied during the time you were City Comptroller?
A. Yes, sir; general book-keeper.
Q. Is Mr. Font generally acquainted with the run of the office there?
A. Yes, sir.

FRED C. FONT, being duly sworn by the Court, deposes and says:

Direct examination by Mr. LOUQUE:

Q. Mr. Font, what position did you occupy during the last four years?
A. Clerk, City Comptroller.
Q. What position in the office of the City Comptroller?

A. I had charge of the accounts.

Q. Are you familiar with the book keeping of the Comptroller's office?

A. Yes, sir.

Q. Did you have occasion to examine into the collection of the Metropolitan Police tax for the years 1869 to 1877, inclusive?

A. Yes, sir.

Q. Do you know whether all the books which contain these collections are to be found in the Comptroller's office?

50 A. All but two.

Q. Well, state what they are?

A. Ledgers C and D, which were in the City archives something over two years ago, but which could not be found to comply with this subpœna; they have evidently been mislaid in the return to the custodian.

Q. Well, did you have occasion to make an examination of these books—did you see in these books these particular taxes that we claim in this suit?

A. Yes, sir.

Q. Did you find out the entries in those books?

A. Yes, sir; we did.

Q. Did you take a memorandum of those entries at the time you examined into them?

A. We did.

Q. Have you got a memorandum of these entries?

A. The memorandum which I gave you is the memorandum.

Q. Please look at this and state whether that is the memorandum you gave to me?

A. Yes, sir, appears to be a copy of the memorandum which I gave you.

Q. Is this report a correct report of the taxes as contained in those two books which are missing?

A. It is correct in this manner, that we went further than these books; we went to the original books and deducted from the accounts such entries as we thought did not properly belong therein; licenses, for instance.

By Mr. THOMAS: I do not know what the purpose of this is. I object to any memorandum made from the books, on the ground the books are the best evidence.

By Mr. ROUSE: It is shown they have been lost.

By Mr. THOMAS: Oh, no, not to my satisfaction, at least.

51 By Mr. LOUQUE: We called for them and they are not here this morning.

By Mr. THOMAS: I say if anything is missing I will have a search made for them. Is it a book this size?

By the WITNESS: Not quite that size; it is a large book, though.

By Mr. LOUQUE: We can go on with the balance of the books reserving the right to these gentlemen to produce the missing books.

By Mr. THOMAS: We object to any testimony, on the ground the books are the best evidence.

By the COURT: I do not know that their loss has been established

The statement of this officer is—what do you state in regard to them?

A. I stated, when we made this statement for Mr. Louque we had those books, we got them from the archives.

Q. When was that?

A. Something over two years ago, I don't remember the exact date. Those books, as far as I can remember, were returned to the archives. When this subpœna was served we looked first through our office for the books, and then to the archives; the keeper of the archives could not produce them, and, as far as I could look through that immense mass of old books up there, I could not find them.

By Mr. THOMAS:

Q. When did you look for the books, Mr. Font?

A. Looked for them yesterday morning, yesterday afternoon and this morning.

Q. When did you go into the archives?

A. Yesterday morning.

Q. How much of a search did you make for them?

A. Pretty good search.

52 Q. Where did you look first?

A. Where the keeper of the archives pointed out to me the books should be.

Q. Did you carry the books from the archives to the City Comptroller's office and back from there to the archives yourself?

A. I could not state that; I had them brought down and, to the best of my recollection, I had them brought back.

Q. You do not believe the book is destroyed?

A. No.

Q. Or specially hidden?

A. No.

Q. You think a search would develope the book?

A. Yes, sir.

By the COURT: I think you better preserve the subpœna in force and let further search be made for it.

Mr. CHARLES A. AITKENS, being first duly sworn by the Minute Clerk, deposes and says:

Direct examination by Mr. LOUQUE:

Q. Mr. Aitkens, in what book is contained the collections commencing at the time of the list annexed to the petition?

A. Contained in special ledger of 1877, folio 84, or thereabouts.

Q. Commencing at folio 84?

A. Yes, sir.

Q. By Mr. LOUQUE: I offer in evidence folio 84, 85, 86, 87 and 88 of the special ledger of the comptroller's office of 1877.

Q. This account is an account of what?

A. Interest collections for 1877.

By Mr. THOMAS: To which question I object, and I object to all

testimony effecting the Metropolitan Police tax of 1877, for the reason the Receiver is without any authority to administer
53 the collection. It is understood the Court gives the same ruling, with the same Bill of Exceptions reserved by counsel for defendant.

By Mr. LOUQUE:

Q. What item of the account annexed to the question does this cover?

A. This covers the last two items.

Q. That runs from what date to what date?

A. From the 31st of March, 1877, to the 24th of May, 1890, and the other item from the 22nd of March, 1877, to the 31st of March, 1877.

Q. Mr. Aitkens, on the books of the Comptroller's office are the tax and interest entered in one and the same account, or is the interest entered separately?

A. The interest is kept separately.

Q. And the tax separately?

A. Yes, sir, kept in separate accounts.

Q. What you are testifying now to is in reference to the collection of the interest account?

A. Yes, sir.

Q. What is the total amount figured out in this book for those dates?

A. Twenty thousand seven hundred and ninety two dollars thirty nine cents.

Q. The petition does not ask quite so much; nineteen thousand five hundred and fifty one dollars seventy two cents.

Q. It includes also two hundred and twenty three dollars ten cents, on page 263 of general ledger No. 1.

By Mr. LOUQUE: I offer that page in evidence—page 263 of general ledger No. 1.

By Mr. THOMAS: The same objection is made to that as before.

54 By Mr. LOUQUE:

Q. Collections of interest from the 22nd of March to the 31st of March 1877——

A. That is on the books of 1877, interest of 1877, on the books of 1877.

Q. State the amount in the memorandum carried out?

A. You mean the percentages?

Q. Yes?

A. Four hundred a*b*d sixteen dollars, sixty five cents, from March 22nd to March 31st, 1877, and three thousand four hundred and ninety three dollars sixty nine cents, from March 31, 1877, to May 24, 1890.

Q. Now, in relation to the principal of the tax of 1877 find the folios on which these taxes are entered as collected?

A. I think it would be well to start at the beginning. Metropolitan Police tax collections started on the 22nd of March, 1877.

The collections from that date up to and including the 31st of March, 1877, were forty four thousand three hundred and thirty two dollars forty seven cents, as shown by the total on page 320 of special ledger 1877.

Q. Is that Metropolitan Police tax separate?

A. Yes, sir, kept separate from other taxes.

Q. What folio is that?

A. Folio 320, special ledger 1877.

By Mr. LOUQUE: I offer that folio and that ledger in evidence.

By the WITNESS: The account continues on pages 321, 322, 323, 324 and 325, and shows total collections from March 22nd, 1877, Metropolitan Police Tax, up to and including January 26, 1880, two hundred and eighty thousand nine hundred and eighty seven dollars fifty cents, making the collections from March 31, 1877, to January 31, 1880, two hundred and thirty six thousand
55 six hundred and fifty five dollars three cents.

By Mr. LOUQUE: I offer all these folios in evidence.

Q. So that in the total of this folio, the forty-four thousand three hundred and thirty two dollars forty seven cents, mentioned by you first, that is included in this total of two hundred and eighty thousand?

A. Yes, sir.

By Mr. THOMAS: It is understood my objection to this 1877 tax goes against all this testimony, with the same ruling and same Bill of Exceptions reserved.

By Mr. LOUQUE: Yes, sir.

Q. You have two more items?

A. After January 31, 1880, the Metropolitan Police Tax was not kept in a separate account, but was credited along with City Taxes for 1877.

Q. What was the total collected then from January 31, 1880, to July 2, 1880?

A. The total collections of City Taxes from January 31st, 1880 to July 2, 1880, were two thousand two hundred and five dollars two cents.

Q. Now, by taking the proportion, how much do you figure it out?

A. By taking the proportion of 3/13 the amount of the Metropolitan Police tax was five hundred and eight dollars eighty-five cents.

Q. What is that ledger?

A. Special ledger 1887, folio 15.

By Mr. LOUQUE: I offer that in evidence.

Q. Now, what is the next item? Now, the collections from the 5th of July, 1880 to the 24th of May, 1890, what was that?

A. These collections are entered in the City Tax of 1877 account.

Q. Same special ledger?

56 A. On special ledger 1877 City Tax account in general ledger No. 1, folio 249, and transferred to folio 342 of the same ledger.

By Mr. LOUQUE: I offer that ledger and folios in evidence.

Q. What was the total?

A. The total on July 2, 1880, was five hundred and sixty eight thousand two hundred and seventeen dollars, sixty three cents; total on May 24th, 1890, six hundred and six thousand six hundred and seventy-one dollars sixty six cents.

Q. What is the difference?

A. Thirty eight thousand four hundred and fifty four dollars three cents.

Q. And the proportion of that would be for the Metropolitan Police Tax?

A. One third, would be twelve thousand eight hundred and eighteen dollars one cent.

By Mr. LOUQUE: This closes for 1877 our contention.

Q. Now look for 1876, for the interest collection to the 24th of May 1890——

By Mr. THOMAS: What books are those?

By the WITNESS: These are the Comptroller's books. That must be in the special ledger..

By Mr. LOUQUE:

Q. Which book do you want?

A. The special ledger of 1876 (counsel hands to witness). The interest account for the year 1876 is contained in special ledger 1876—do you want all the folios?

Q. Yes?

A. On folios 66, 67, 68, 69, 70, 71, 250 and 251 of special ledger 1876, and on folio 258 general ledger No. 1.

By Mr. LOUQUE: I offer these ledgers in evidence and the folios.

57 Q. Now, state the total amount of the collections up to the 24th of May, 1890?

A. There is a difference between the total amount shown by these accounts and the amount we reported to you.

Q. When you say "we," who do you mean?

A. Mr. Font and myself.

Q. You made the examination with Mr. Font?

A. Yes, sir.

Q. Was he competent to examine the books with you?

A. I had every reason to believe he was.

Q. He had been in the Comptroller's office a long time?

A. Yes, sir.

Q. He was an expert on these accounts?

A. He knew all these accounts, yes sir.

Q. Then state the difference between what you found and what you allowed the plaintiff?

A. Let me ask you something. You first asked me, when you turned this matter over to me, to get a statement of the amounts collected—you first asked me to get the amounts from the 31st of

March, 1877, to the 24th of May, 1890; while all that is reported under that heading I think after, when I reported the amount, you stated account should be taken of all interest from the time of the beginning of the account, even though it antidated March 31, 1877, claiming that interest followed the tax——

Q. And they had never paid us any interest at all for that year?

A. So the amount I give you now is the total of the account from the beginning, less certain deductions that we made. The total amount collected is thirty nine thousand four hundred and thirty five dollars ninety four cents.

Q. Of which you allowed us how much?

58 A. Thirty three thousand eight hundred dollars eighty eight cents.

Q. Making the pro rata how much would that come to?

A. That is not a pro rata; that is -aking a deduction of things that do not properly belong to that account.

Q. You left thirty three thousand eight hundred dollars eighty eight cents interest collected, for all interest collected?

A. Yes, sir.

Q. Making the pro rata in that year—what was the pro rata in that year?

A. 42/150.

Q. That brings the result you carried out to how much?

A. Nine thousand four hundred and sixty four dollars twenty five cents.

Q. Now, that six thousand dollars, or in the neighborhood of six thousand, which you deducted, what was that for?

A. Well, I could not say exactly now what it is for, it is for collection of interest on licenses, for instance.

Q. If you had allowed us interest on all the amounts collected our figure would be greater than you allowed us?

A. Thirty nine thousand four hundred and thirty five dollars ninety four cents.

Q. In running up the account you made all the proper deductions that ought to be made so as to entitle us only to the tax proper?

A. I consider we made the deductions that should have been made.

Q. Can you give us for 1875, if you have the book?

A. That is in the special ledger for 1875; that is over there. (Counsel hands to witness.) The interest account for the

59 tax of 1875, folios 47, 48, 49, 50, 51, 52, 53, 54 and folio 230 of general ledger No. 1.

By Mr. LOUQUE: I offer these two ledgers and the folios in evidence.

By the WITNESS: The total amount of the account up to May 24, 1890, was seventy nine thousand eight hundred and fifty six dollars eighty two cents.

Q. Of this amount how much did you allow to the plaintiff?

A. 99/100 of sixty two thousand one hundred and thirty four

dollars sixty three cents, or, net, twelve thousand three hundred and two dollars sixty five cents.

Q. In running over these accounts, Mr. Aitkens, you made all the proper deductions that should have been made in order to get, as a result of your calculations, nothing but the interest on the tax of 1875 levied by the city of New Orleans?

By Mr. THOMAS: You have been examining in that way, but you are testifying, Mr. Louque.

By Mr. LOUQUE: He examined the books before and made some deductions; instead of allowing us seventy nine thousand, you say——

By the WITNESS: Seventy-nine thousand eight hundred and fifty, six dollars eighty two cents.

By Mr. LOUQUE: Instead of allowing that, he allowed us sixty two thousand one hundred and thirty four dollars eighty three cents.

By the WITNESS: When you ask me whether I personally did that, I cannot swear to any particular item, you know; I was doing the work with some one else, Mr. Font, who did work during my absence; when I say I did that, I cannot state I did any particular item.

Q. The total amount allowed us was sixty two thousand one hundred and thirty four dollars three cents of interest collected on the tax of 1875?

60

A. Yes, sir.

Q. And you allowed 99/150 as the pro rata of the Metropolitan Police Tax?

A. Yes, sir.

Q. Making the total allowed to us of twelve thousand three hundred and two dollars sixty five cents?

A. Yes, sir.

Q. Have you got the books of 1874 here?

A. I think the special ledger of 1874 is here. (Counsel hands to witness). The interest account for 1874 is contained in special ledger 1874, pages 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67 and 538.

Q. Of special ledger of 1874 of the Comptroller's office, is that right?

A. Yes, sir, and on page 350 of general ledger No. 1.

By Mr. LOUQUE: I offer these books and these folios in evidence.

By the WITNESS: These amount to one hundred and ten thousand three hundred and ninety six dollars ninety eight cents.

Q. How much have you allowed us of this amount?

A. One hundred and nine thousand seven hundred and ninety six dollars ten cents.

Q. What proportion have you made as going to the Metropolitan Police tax?

A. 89/500.

Q. And you carried the total out, how much?

A. Nineteen thousand five hundred and forty three dollars seventy cents. The interest account for 1873 is contained in special ledger

of 1873 on pages 41, 42, 43, 248, 249, 250, 251, 252, 253, 294, 295, 296, 297, 298 and 299.

By Mr. LOUQUE: I offer that book and those folios in evi-
61 dence.

By the WITNESS: And amounts to——

Q. And what other folio?

A. One little item of seven dollars five cents, folio 354 of general ledger No. 1.

By Mr. LOUQUE: I offer that folio and that ledger in evidence.

Q. How much did that figure?

A. And amounts to two hundred and four thousand nine hundred and twenty six dollars twenty three cents.

Q. How much of that did you allow the plaintiff?

A. One hundred and forty nine thousand four hundred and eighty eight dollars seventy five cents.

Q. What was the pro rata of the Metropolitan Police tax on that interest?

A. 32/300.

Q. And you figured it how much?

A. Fifteen thousand nine hundred and forty five dollars forty six cents.

Q. Tell us about the Metropolitan Police Tax collected in 1873?

A. I cannot tell you anything about that because the ledger is not here.

Q. The tax itself?

A. Yes, sir.

Q. Well, did you look at the ledger when you made the examination?

A. Yes, sir.

By Mr. LOUQUE: Well, Mr. Thomas, let him testify to what he found, and if you find the book will speak for itself, and we will take the book instead of his testimony.

By the WITNESS: I kept a special memorandum up at the Hall of the amounts for those years. I went first of all through the cash
62 books of the City Treasurer and then checked them against the accounts of the Comptroller; I have a memorandum book up there in which these amounts are contained; I did not keep an account of everything.

Q. Did you find the Treasurer's books agreed with the Comptroller's books?

A. Yes, sir.

Q. Well, was the tax of 1873 entered under the head of Metropolitan Police Tax, a separate account, in the ledger, the principal of the tax?

A. That is more than I can say; I don't remember. I think after a certain date, just what the date was I do not remember, an account was opened on the ledger, "tax 1873 and previous years," and I do not think that a special Metropolitan Police tax was kept for those afterwards; in order to get at the amount due the Metropolitan Police Tax it was necessary to go through the cash books and find out how

much was paid each year; taking the account in the ledger you could not tell, as the account reads, "1873 and previous years," and that is why, it seems to me, at the time I made a special memorandum of it.

Q. You have that memorandum?

A. Yes, sir, I haven't it, but this is a copy of the memorandum I have.

Q. You made that copy yourself?

A. Yes, sir.

Q. You have a right to refresh your memory from that; what did you find?

A. I found the figures on this report?

Q. Give us the figures?

By Mr. THOMAS: That is doing in a round-about way what the Court has ruled on; he is testifying about books we have not here in court.

By Mr. LOUQUE: I made a proposition to the gentleman
63 to let Mr. Aitkens testify, and when we get the books we will go by the books and not by his figures. If he does not produce the books his figures will stay.

By the WITNESS: I do not think you could get it from the ledgers; you would have to go to the cash books.

By Mr. ROUSE:

Q. You have done that?

A. Yes, sir.

Q. And from your work you made that memorandum?

A. Yes, sir.

Q. It is accurate, is it?

A. As far as I know, it is.

By Mr. LOUQUE:

Q. What was the total amount you found of tax for 1873?

A. Fifty two thousand seven hundred and forty four dollars ninety four cents.

Q. What was the pro rata you allowed the Metropolitan Police Tax?

A. 32/300.

Q. What was the total allowance?

A. Five thousand six hundred and twenty six dollars twelve cents. There may be a special account on ledger D for this; I am not certain but I don't think there is.

Q. The other book that you did not find, that was not brought here, is for the interest and the tax of 1871; did you go through that, through the books?

A. I do not think I consulted any ledger for this; perhaps it is on the ledger, I'm not sure about that, since the account, after a certain time, it was called "tax for 1873 and previous years"; then you had to go to the cash books, and then you could not be certain.

64 Q. What did you do in that case?

A. Could not do anything.

Q. Did you take advantage of that to give to the plaintiff the benefit of that, or did you take it out of your calculation?

A. I could not say; I think, as a general thing, I deducted it, when in doubt I think it was left out; it is over two and a half years now.

Q. What figure did you find as interest collected for 1871?

A. Ninety one thou-and seven hundred and ninety four dollars fifty five cents.

Q. What was the proportion of the Metropolitan Police Tax in that?

A. 119/550.

Q. What did you carry out to the credit of the plaintiffs?

A. Nineteen thousand eight hundred and sixty one dollars.

Q. Now, for the principal of the tax, Mr. Aitkens, in 1871, what did you find?

A. Forty seven thousand one hundred and seventy seven dollars one cent.

Q. Was that the same proportion?

A. 119/550.

Q. What did you carry out there?

A. Ten thousand two hundred and seven dollars thirty nine c-ts.

Q. Now, Mr. Aitkens, in running through the books and finding out these amounts and items, did you take the trouble to go to every item and find every credit to which the plaintiff would be entitled or that the City had a right to deduct; in other words, did you take the trouble to sift the account so that the report you made would be correct?

A. Yes, sir, I did, of course.

Q. Let us see what you did for 1870—that is one of the other books that is missing?

65 A. Interest for 1870, eighty five dollars twenty two cents.

Q. What was the proportion?

A. 2/7.

Q. How much credit did you give to the plaintiff?

A. Twenty four dollars thirty five cents.

Q. Now, for the principal of the tax of 1870?

A. Seventeen thousand eight hundred and fifty nine dollars ninety eight cents.

Q. Same proportion?

A. 2/7; yes, sir.

Q. What did you carry out?

A. Five thousand one hundred and two dollars eighty five cents.

Q. Now, for 1869 tax, what was the collection?

A. Nine thousand four hundred and twenty two dollars, even.

Q. And what was the proportion?

A. 6/19.

Q. How much did you carry out?

A. Two thousand nine hundred and seventy five dollars thirty seven cents.

Q. There is no interest in that year?

A. No, sir.

Q. None is claimed in that year. Now, the item of collections for tax of 1869 run from what date to what date that you allowed here?

A. From March 31, 1877, to May 24, 1890, I suppose. I am not certain about that.

Q. That is right; that is what we claim in this suit. The tax of 1870 runs from what date to what date?

A. The same dates.

Q. And the interest?

66 A. Eh, I could not say.

Q. The same dates also?

A. I could not say; I don't remember exactly.

Q. Have you a memorandum for 1871?

A. Well, the tax all goes from March 31, 1877, to May 24, 1890, the taxes, but the interest in some cases goes back to the beginning of the interest account.

Cross-examination by Mr. THOMAS:

Q. Mr. Aitkens, I understand you made this examination and took this memoranda, from which you are testifying, something over two years ago?

A. Well, some part of it I think was done—well, I won't exactly say what month—I think August or September, 1902, and some in October; I don't remember exactly when but about that time, 1902.

Q. What was the purpose of your making this examination; you just did not have curiosity about the Metropolitan Police fund?

A. No, sir, at the request of Mr. Louque I made the examination.

Q. That is the Mr. Louque who is counsel for the plaintiff in this case?

A. Yes, sir.

Q. Now, as I understand, the general result of your testimony here is that the books of the Comptroller's office, about which you have been testifying, show entries relating to the Metropolitan Police Tax?

A. Yes, sir.

Q. And it does not show, there is nothing in your testimony and you have not been intending to testify that the City of New Orleans owes this?

A. Oh no, I did not want to create that impression; it is not for me to determine that.

Q. This is just the result of your investigation?

67 A. Yes, sir.

Q. And when you make a ratio you make it why? For instance, Mr. Louque said through his examination "you allowed us how much"; that was not the proper term to use, was it? You are dealing with just simply a lot of figures?

A. During these years, if I understand it right, the Council, or whatever body it was that acted upon those matters, prorated the tax, so much per cent. to Police, so much to Public Buildings, etc., and these fractions I have given you are the parts of the tax belonging to the Metropolitan Police fund.

Q. When you say belong to the Metropolitan Police fund, you

mean they appear as credit to the collection of the Metropolitan Police?

A. If not credited to the Metropolitan Police Tax account they have been taken out of the City Tax account.

Q. Taken out of the City Tax account; that is where the Metropolitan Police account was not kept separate?

A. Yes, sir, wherever there is a proportion it means that has been taken out of the City Tax account, which included the Metropolitan Police tax.

Q. Was that the limit of your examination of these books; did you go any further or outside of the simply entry of the Comptroller of the collection of certain Police taxes; you did not go beyond that? You did not go to see what became of the tax, where it should go or where it did go, or anything of that kind?

A. No, sir.

Q. How long did it take you to make this examination?

A. I could not state exactly how long.

Q. Was it the work of little labor or of great labor?

A. Work of considerable labor.

Q. Covering any great length of time?

A. I could not exactly state what amount of time it covered.

68 Q. Could you have done it in a week?

A. No.

Q. Two weeks?

A. I suppose two weeks, if I devoted all my time to it; you see Mr. Font and I were working together, and it took more than that time actually.

Q. What I am getting at, Mr. Aitkens, is this: That eventually the disposition of this fund will have to be gone into, and as I have never had an expert at my disposal I wanted to know, for my own information, how long it would take an expert to go over these Metropolitan Police Tax accounts?

A. That is hard to say. The books in the City Treasurer's office are the old cash books; they would have to be checked against the Comptroller's books, and as this covers a period of thirteen or more years, you can imagine there is a great deal of work in it. I know I spent many days up in the archives looking over these old books; how much I spent I am not prepared to say; I went away a little time in the Summer, and when I came back got to work again.

Redirect examination by Mr. LOUQUE:

Q. Mr. Aitkens, you had been consulted at one time as an expert on behalf of the City in relation to some special taxes, had you not?

A. Yes, sir; some years ago.

Q. Is that the way in which I first became acquainted with you?

A. Yes, sir.

By Mr. LOUQUE: That was in the Fisher case.

Mr. FRED C. FONT recalled.

Examination by Mr. LOUQUE:

Q. Mr. Font, you heard the testimony of Mr. Aitkens?

A. Yes, sir.

69 Q. Now, are you familiar with the books in the Comptroller's office?

A. Yes, sir.

Q. How long have you been connected with the Comptroller's office?

A. Since May, 1896.

Q. Did you help Mr. Aitkens to make an examination of those books?

A. Yes, sir.

Q. For the Metropolitan Police Tax?

A. Yes, sir.

Q. You he-rd the books and folios and pages from which he testified?

A. Yes, sir.

Q. Do you corroborate the testimony that Mr. Aitkens has given?

A. Yes, sir; it would have been my testimony; I mean to say that I would have answered the questions in the same way Mr. Aitkens answered them, in referring to the books and the totals.

By Mr. THOMAS:

Q. In other words, two men cannot make different calculations out of the same figures?

A. I don't mean to convey that idea at all; you can make anything out of figures, as a general proposition; but I would have answered the questions in the same general way as he answered them, by referring to the books and the totals in those books as we did the work together.

By Mr. LOQUE:

Q. How long would it take a man to go at these books and examine all the items so as to make a correct statement of this?

A. It took us six or eight weeks to make this statement, but working from about four to six in the after*boob*, and then after

70 eight o'clock at night to nine, ten, eleven, twelve o'clock, as we felt inclined. Of course, a man working steadily at it would probably do it in less time.

Q. You have a memorandum in your hand; who got up this memorandum?

A. Do you mean who struck it off on the typewriter?

Q. No; who made the figures?

A. Made by both of us working together.

Q. Is the memorandum that you hold in your possession an exact memorandum of the figures that you got from the books with Mr. Aitkens?

A. Yes, sir.

Q. Will you look at your memorandum and call out the figures and see if they correspond with the memorandum annexed to the petition in this case?

A. The total?
Q. No, not the total, the details?
A. 1869 tax two thousand nine hundred and seventy five dollars thirty seven cents.
Q. What is that figure?
A. That is the collection of the Metropolitan Police tax for 1869.
Q. From what date to what date?
A. From the 31st of March, 1877, to the 24th of May, 1890.
Q. All the items pretty near run in the same dates?
A. Yes, sir.
Q. Give us the 1870 tax?
A. Five thousand one hundred and two dollars eighty five cts.
Q. Collections of interest, 1870?
A. Twenty four dollars thirty five cents; I am giving you the proportion, the net figures.

71 Q. The figure you call is the figure the Metropolitan Police fund would be entitled to collect?

A. Yes, sir. 1871 Tax, ten thousand two hundred and seven dollars, thirty nine cents; 1871 interest, nineteen thousand eight hundred and sixty one dollars twelve cents; 1873, Tax, five thousand six hundred and twenty six dollars twelve cents; 1873 interest, fifteen thousand nine hundred and forty-five dollars forty six cents; 1874 interest, nineteen thousand five hundred and forty three dollars seventy cents. 1875 interest, twelve thousand three hundred and two dollars sixty five cents; 1876 interest, nine thousand four hundred and sixty four dollars twenty five cents; 1877, Tax collections from March 22nd to March 31, 1877, forty four thousand three hundred and thirty two dollars forty seven cents——

By Mr. THOMAS: It is understood to Mr. Font's testimony, relative to 1877 tax, I make the same objection; it covers all testimony of any kind.

By Mr. LOUQUE: We agree to that.

By the WITNESS: 1877 tax collections from March 31, 1877, to January 31, 1890, two hundred and thirty six thousand six hundred and fifty five dollars three cents; 1877 tax collections from January 31, 1880, to July 2, 1880, five hundred and eight dollars eighty five cents. 1877 tax collections from 5th of July, 1880 to 24th of May, 1890, twelve thousand eight hundred and eighteen dollars one cent; 1877, interest collections from the 22nd of March, 1877, to 31st of March, 1877, four hundred and sixteen dollars sixty five cents; 1877 interest collections from March, 1877, to May 24, 1890, three thousand four hundred and ninety three dollars sixty nine cents.

Q. What is the total?
A. Three hundred and ninety nine thousand two hundred and seventy seven dollars eighty four cents.

72 Q. Now, did you get at the details of the collection from day to day in the Treasurer's office to arrive at these figures where they were not separately kept in the ledgers?

A. Yes, sir.

Cross-examination by Mr. THOMAS:

Q. You were specially employed to assist Mr. Aitkens in this work?
A. Yes, sir.
Q. You were not doing it——
A. Not for my health, no sir.
Q. You were not doing it in your capacity as clerk in the Comptroller's office?
A. No, sir.

Case continued for further testimony to July 18, 1905.

Mr. LOUIS A. HUBERT, being first duly sworn by the Minute Clerk, deposes and says:

Direct examination by Mr. LOUQUE:

Q. You are the Receiver in this case?
A. I am, sir.
Q. And the plaintiff?
A. Yes, sir.
Q. Have you had any demand made on you for the payment of the indebtedness of the Metropolitan Police?
A. I have, yes sir.
Q. Who made the demand on you?
A. I have a letter from Rouse and Grant, attorneys, New Orleans.

By Mr. LOUQUE: Let me show it to Mr. Thomas (hands to Mr. Thomas).

Q. Is this the letter that you received from Mr. Rouse?
73 A. Yes, sir.
Q. Just read it to the Court.

By Mr. THOMAS: Of course he cannot read it until it is offered in evidence, and I object to its being offered in evidence, it being an *ex parte* statement, and I should have the opportunity of cross examining the party. If the letter is offered simply to prove that somebody has made a demand on the Receiver in this case I don't know that I would have any legal right to object, but for the purpose of proving the fact I think it is objectionable.

By the COURT: I think it could be received only as *rem ipsam* to show such a letter was written and received by the Receiver.

By Mr. LOUQUE: I offer that letter in evidence, marked "p8".

By the COURT: I receive it as *rem ipsam*.

By Mr. THOMAS: To which ruling of the Court counsel for defendant excepts and reserves this note in lieu of a formal Bill of Exceptions.

By Mr. LOUQUE:

Q. Have you been sued before the courts for any claims?
A. Yes, sir.

By Mr. THOMAS: I think the best proof of that would be the record.

By Mr. LOUQUE: I offer in evidence the record in the suit of Mrs. Begue against Hubert, Receiver, No. ——.

Q. Have any demands been made on you?
A. Not that I remember.

Cross-examination by Mr. THOMAS:

Q. Mr. Hubert, have you made demands on the city or on the Board of Liquidation of City Debt for payment of the Metropolitan Police Taxes collected since the payment of the judgment in the case of Harrison, Receiver, *vs.* The City?

A. If I have made any demands?

74 Q. Yes.

A. This is a demand which I have made already.

Q. I understand. I took it for granted you were familiar with your Receivership?

A. I am, yes sir.

Q. They have been paid to you?

A. Yes, sir.

Q. All the collections since the judgment of the Harrison matter?

A. Yes, sir.

Q. No claim has been made by you for any taxes collected by the City of New Orleans subsequent to the Harrison judgment?

A. No, I am being paid that right along; that is only since the order of court ordering the city to keep the taxes separate from the city; it is only since that order I received money from the city.

Q. How much money have you collected from the City of New Orleans?

A. About four thousand dollars.

Q. What have you done with the money?

A. Deposited it in the State National Bank.

Q. Have any of the creditors of the Metropolitan Police fund been paid out of that?

A. Not yet; haven't proved up their claims yet.

Q. How long have you had that money in your hand?

A. It started with about two thousand dollars.

Q. When was that?

A. About two and a half years ago.

Q. Have you filed any account?

A. No; I have a judgment of five thousand dollars and I have *less* a little less than four thousand on hand.

75 By Mr. LOUQUE:

Q. You mean there is a judgment against you for five thousand dollars as Receiver?

A. Yes, sir, as Receiver.

By Mr. THOMAS:

Q. Do you know when the Metropolitan Police Board went out of existence?

A. Yes, sir.

Q. When?
A. First of April, 1877.
Q. The first of April, 1877?
A. Yes, sir.
Q. Will you let me see that Budget ordinance of 1877 you offered in evidence yesterday? (Mr. Louque hands to Mr. Thomas.)
Q. Have you got the books of the old Metropolitan Police Board Mr. Hubert?
A. I have not. I have them in my office; you are welcome to them at any time.

By Mr. THOMAS:

Q. Have you got any of the warrant books, the books from which the Police warrants were torn, showing stub entries of their issue?
A. Not in my possession.

By Mr. THOMAS: You say you have these, Mr. Louque?
By Mr. LOUQUE: Yes, sir.
By Mr. THOMAS: You have these warrant books?
By Mr. LOUQUE: I think so; I have half a dozen books in the office.
By Mr. THOMAS: And you say I can look at them?
By Mr. LOUQUE: Why, certainly.

By Mr. THOMAS:

Q. So at present, not having had possession of the books
76 of the *books of the* Metropolitan Police Board you are not familiar with the number of warrants issued by the Police Board or the consideration for which they issued?
A. I am not.
Q. You would not be able to tell at this time what, if any, Police warrants were issued payable out of the taxes of 1877?
A. Payable out of that particular year?
Q. Yes?
A. I have no record in my immediate possession to show me that.

Mr. J. D. ROUSE, being first duly sworn by the Court, deposes and says:

Direct examination by Mr. LOUQUE:

Q. Mr. Rouse, have you been connected with the Metropolitan Police case for some time?
A. My firm has been engaged in endeavoring to compel the payment of the amount due by the City of New Orleans to the Metropolitan Police Board for something more than ten years. We represent creditors, holding certificates of indebtedness, issued by the Board, or Police Warrants issued by the Board of Metropolitan Police, exceeding one hundred thousand dollars, all of which were proved contradictorily with the City of New Orleans; they can be produced whenever required; they have never been paid. There are claims making a total, I think, of about one hundred and twenty six thousand dollars, that are also established in that proceeding.

Q. Will you please look at this record in the United States Court, in the case of Benjamin, already offered in evidence, and state whether the claims mentioned by the Master in Chancery in his report to the Court, are the claims you refer to in your testimony?

77 A. Well, I referred to—yes, these are the claims I refer to. My firm was not the representative of all those whose claims are here reported upon, but of the great majority of them; the amount I find here established against the city was one hundred and twenty three thousand nine hundred and sixty three dollars six cents, with legal interest from January 1st, 1877.

Q. This report of the Master was had contradictorily with the City of New Orleans, was it not?

A. It was; the city appointed an expert, the plaintiff appointed an expert, and all that are mentioned there were established before the Master and the decree made by the Circuit Court of the United States that the city pay the amount with interest; I do not remember whether it was decreed to be paid with interest or not. The case was subsequently reversed upon a question of jurisdiction alone; it was held by the Supreme Court of the United States that the case was not within the jurisdiction of the Circuit Court of the United States; for that reason the judgment was reversed.

Q. Mr. Rouse, will you please look at this decree and state whether this is the decree that you mentioned, that is offered in evidence?

A. The decree I refer to was made in the suit of Benjamin against the City of New Orleans and others, contained in the record of that case, which has already been put in evidence, signed March 31, 1892. I see that the decree gave five per cent. interest from the 9th of January, 1891, until paid.

Cross-examination by Mr. THOMAS:

Q. Thas is the decree that you say was reversed on appeal?

A. Reversed solely on the question of jurisdiction of the Circuit Court.

Q. There is no such decree standing now?

78 A. No, only a part of it, to other corporations condemned herein. The Parish of St. Bernard and City of Kenner they took no appeal, and it is doubtful whether the effect of that reversal would affect these judgments.

Q. What is the No. of the United States Report that Benjamin case is reported in, wherein the Supreme Court reversed this decree and dismissed the bill?

A. I would not be positive but I think it is the 154th United States.

By Mr. LOUQUE: 153rd, page 411.

By Mr. THOMAS: The decree that the witness has been testifying about as reversed by the Supreme Court is shown by their opinion in the 153rd United States Reports, page 411.

Q. These claims that you say you have, are the same warrants that suit was brought on in the Benjamin case?

A. I think nearly all of them.

Q. And in the Emsheimer case?

A. A large number of them are in the Emsheimer case; it may be that among the warrants and certificates held by our clients there are some that were not in the Benjamin case; sometimes there were changes in ownership.

Q. The Emsheimer case met with about the same fate as the Benjamin case in the Supreme Court, did it not, Major?

A. There were different features in the Emsheimer case, but it finally met with the same fate as the Benjamin case.

Q. You tried to make the Emsheimer case a little stronger than you did the Benjamin case?

A. I did, if possible; I don't think it was possible, however.

By Mr. THOMAS: I ask that Mr. Tujague be appointed expert to go over the figures of the Metropolitan Police Tax covering the years it was collected.

79 By the COURT: In the event of the determination of the case I should find myself confronted with intricate figures and would need the services of an expert accountant, I have no doubt as to my authority to appoint an expert.

Case continued to February 8, 1905.

EXHIBIT P-8.

(*Letter Addressed to Hubert, Receiver, and Signed by Rouse and Grant.*)

Filed March 30th, 1905.

NEW ORLEANS, *Nov. 9th*, 1905.

Louis A. Hubert, Esq., Receiver of Board of Metropolitan Police, City.

DEAR SIR: We are the attorneys for the persons named below, who are creditors of said Board of Police, for the amounts set opposite their names (and more) and call upon you to pay the amounts due them, with 5% per annum interest, from the dates of the warrants or certificates respectively held by them ranging from 1869 to 1876, viz:

H. Abraham and Son	$10,000
F. L. Fernandez	18,000
Isidore Newman & Son	25,000
Mrs. J. De Jan	6,000

We also represent other creditors the amounts due them exceeding $50,000, the particulars of which we will furnish you when required.

Yours truly,

(Signed) ROUSE AND GRANT.

80 *Testimony and Notes of Evidence in the Above Entitled and Numbered Cause, Taken in Open Court on the 30th day of March, 1905, Before the Hon. T. C. W. Ellis, Judge.*

By Mr. THOMAS: The experts, who were appointed to go over the books of the City, to ascertain the exact condition of affairs of the Police tax, have completed their work, and it shows some minor differences between the testimony of the witnesses for the plaintiff and the report as made by the experts; it really is against the City, however, to the extent of, probably, nearly two thousand dollars.

I do not need the report in evidence, but it was made at my request; I only need portions of it, and, I suppose, to correct the errors, so as to give the exact conditions, counsel on the other side will offer the report made by these experts.

By Mr. LOUQUE: It is admitted that since this case was last up for trial, counsel, representing the City of New Orleans, appointed Mr. Tujague to examine and ascertain the true status of the Metropolitan Police tax, and that Mr. Tujague, in conjunction with two other experts,—Mr. Leo Newman and Mr. Charles A. Aitkens—made an examination of the books, and have prepared their report, and that the document now produced is the result of their enquiry, and, in as such, as the counsel for the City of New Orleans declines to offer it in evidence, the plaintiff in the case now makes the offer of this document in evidence, marked "PX1."

By Mr. THOMAS: To which offer counsel for defendant objects, on the grounds already set forth, and upon which the court has already ruled.

By the COURT: The same ruling will be adopted.

81 By Mr. THOMAS: To which ruling of the Court counsel for defendant excepts and reserves this note in lieu of a formal Bill of Exceptions.

Mr. VITAL TUJAGUE recalled.

Examination by Mr. LOUQUE:

Q. Mr. Tujague, will you explain this document, marked "PX1," and state what it is?

A. That is the—do you wish *you* to read it?

Q. No; just state what it is?

A. It is an examination of the books of the Comptroller's and Treasurer's offices, of the City of New Orleans, showing the amount of taxes and interest collected for different years, as per this statement, amounting to four hundred and one thousand two hundred thirty-two dollars nine cents.

Q. Please state at whose request you made this examination?

A. At the request of the attorney, Mr. Frank Thomas.

Q. Attorney for the City of New Orleans?

A. Yes, sir.

Q. Who assisted you in making this report?

A. Mr. Leo Newman and Professor Charles Aitkens.

Q. Mr. Tujague, you are the chief clerk in the Treasurer's office, are you not?
A. Yes sir.
Q. And when the Treasurer is ab-ent you represent the treasurer?
A. Yes sir.
Q. And how long have you been in the City's employ?
A. I have been in the City's employ——
Q. In the Treasurer's Office?
A. In the Treasurer's Office, I am there now since the seventh day of December, 1904, and worked there previously since 1898—from 1894 to 1900.

Q. And during the time you were not in office of the
82 treasurer, what position did you occupy?

A. That of Comptroller of the City of New Orleans.
Q. You were Comptroller of the City of New Orleans?
A. Yes sir.
Q. During what period of time were you Comptroller?
A. From 1900 to 1904, to the——
By Mr. THOMAS: To the 9th of November, 1904.
By the WITNESS: To the 9th of November, 1904.

By Mr. LOUQUE:

Q. Then you are thoroughly familiar with the business and method of bookkeeping of the City of New Orleans, are you not?
A. Yes sir.

Cross-examination by Mr. THOMAS:

Q. On that statement you hold in your hand, Mr. Tujague, does it show the amount of Police tax collected for the year 1877?
A. Yes sir.
Q. What was the amount collected?
A. Two hundred and ninety-four thousand three hundred fifteen dollars thirty-six cents.
Q. Well, Mr. Tujague, in the course of that investigation, did you ascertain what the City did with this Police tax of 1877?
A. Yes sir.
Q. What is this statement I hand you?
A. This is a statement of the different accounts on the ledgers for 1877.
Q. 1877?
A. Yes sir, and the total payments of each.
Q. Does it show anything relative to the Metropolitan Police tax of that year?
A. Yes sir.
Q. Well, what does it show?

A. It shows that against 1877 the City of New Orleans re-
83 ceived the amount of forty-four thousand nine hundred nine-
ty-four dollars seventy eight cents of Metropolitan Police warrants against the tax of that year; and it shows, further, that the pay rolls for the months of January, February and March were paid account the Metropolitan Police tax to the amount of sixty three thou-

sand one hundred ninety-six dollars thirty-eight cents, and the Crescent City Police paid salaries and expenses two hundred and six thousand three hundred fifteen dollars one cent.

A. Showing a total paid for Police purposes by the City of New Orleans, f he year 1877, of how much?

A. That is counting the amount of certificates received in payment of tax?

Q. Yes?

A. Total amount paid for the Metropolitan Police and Crescent City Police is three hundred and fourteen thousand five hundred and six dollars seventeen cents.

Q. This statement, that counsel for plaintiff interrogated you about, shows the collection of taxes by the City of New Orleans previous to 1890, does it not?

A. Yes sir.

Q. What has the City of New Orleans done with the Metropolitan Police tax that it collected since 1890?

A. Turned over to the Receivers.

Q. Paid over to the Receivers?

A. Yes sir.

By Mr. LOUQUE:

Q. Mr. Tujague, in this statement you have "Crescent City Police, salaries and expense account" two hundred and six thousand dollars: That has nothing to do with the Metropolitan Police, has it?

A. No, sir, it is entered in our books in the name of
84 Crescent City Police salaries and expenses.

Q. Now you have an amount of forty-four thousand nine hundred ninety-four dollars seventy-eight cents of Police certificates received in payment of taxes; you mean Metropolitan Police taxes, did you not take this item into consideration?

A. Forty-four thousand.

Q. That forty-four thousand?

A. Yes sir, that is accounted for in the books.

Q. What I wish you to answer, Mr. Tujague, if this credit, which is claimed by the City of New Orleans, on this memorandum, of forty-four thousand nine hundred ninety-four dollars seventy-eight cents, is or is not included in the statements which you furnish of the amounts collected and not accounted for?

A. Yes sir, it is included in this statement of four hundred and one thousand two hundred thirty-two dollars nine cents.

Q. In that amount, sixty-three thousand one hundred ninety-six dollars thirty-eight cents, pay rolls for January, February and March, that is, pay rolls of the Metropolitan Police?

A. That is what the books say, yes sir.

By Mr. THOMAS: Well Mr. Tujague putting it that way, "that is what the books say" about all your statement, why do you qualify it towards this particular one?

A. No, sir, our ledger accounts read differently, one of them reads "Metropolitan Police," and the other reads, "Crescent City Police salaries and expenses."

Q. I understand your answer is, leaving out "what the books say", yes sir?

A. Yes sir.

By Mr. LOUQUE:

Q. Well, in your statement of receipts did you not deduct that sixty three thousand one hundred ninety-six dollars thirty-eight cents?

85 A. No sir.

Q. It is included?

A. Yes sir.

Q. What I mean to say, Mr. Tujague, is, if I express myself right, whether that sixty-three thousand dollars had been deducted from the total collections made?

A. No sir.

Q. That gives the total collections on that thing without any deductions then?

A. Yes sir, total collections of 1877 without any deductions.

Q. In the other years did you deduct all the payments——

A. No sir, total collections too.

Q. Not paid over to the Metropolitan Police?

A. Yes sir.

By Mr. THOMAS:

Q. Do you know when the Metropolitan Police went out of existence?

A. No sir.

By Mr. THOMAS: If your Honor please, I offer the record in the suit of Richard F. Harrison *vs.* The City of New Orleans, filed in the Civil District Court April 1st, 1885, No. 14,131, of the docket of this court.

This offer is made in support of my plea of *res adjudicata* in regard to the tax for the years 1874, '75 and '76.

I offer in evidence the statement, filed on September 23, 1890 in the suit of Harrison, Receiver *vs.* City of New Orleans, in the United States Circuit Court, for the Eastern District of Louisiana, No. 11,899 of the docket of that court, the statement found in that record, showing the condition of the Metropolitan Police tax for the years 1868, 1869, 1870, 1871, 1872 and 1873, found on pages 19 and 20 of the record in the suit of Louis A. Hubert *vs.* City of New Orleans, No. 1251 of the docket of the Circuit Court of the

86 United States Court of Appeal, 5th Circuit.

I offer that to show the City of New Orleans more than paid the Metropolitan Police apportionment for those years to meet my defense of plea of payment of the taxes of 1868, 69, 70, 71, 72 and 73, and 76.

By Mr. ROUSE: I object to the acceptance of the statement in evidence. This is a statement filed by the City of New Orleans in that case. The City of New Orleans cannot make evidence in her behalf by making statements to suit her convenience for the purposes of litigation.

By the COURT: I will receive the paper as the statement; receive as *re ipsam*.

By Mr. THOMAS: To which ruling of the Court counsel for defendant excepts and reserves this note in lieu of a formal Bill of Exceptions. My purpose is for it to go in as proof.

I offer in evidence the statement from which Mr. Tujague testified, relative to the payment by the City of New Orleans of the Police tax for Police purposes for the year 1877, marked "D1."

Case closed and fixed for argument April 13, 1904.

Record in the case of Henry W. Benjamin City of New Orleans, No. 11983, Circuit Court of the U. S. for the Eastern District of Louisiana.

87 *Bill of Complaint.*

Filed February 9th, 1891.

To the Judges of the Circuit Court of the United States for the Eastern District of Louisiana:

Henry W. Benjamin, of New Orleans, an alien and a subject of the Kingdom of Great Britain, brings this his bill against the City of New Orleans, a municipal corporation, created by the laws of the State of Louisiana and a citizen of said State; the City of Kenner, also a municipal corporation created by the law of and a citizen of said State, the Police Jury of the Parish of Jefferson and the Police Jury of the Parish of St. Bernard political corporations created by the laws of and citizens of said State. And, thereupon, your Orator complains and says:

1st. That by an act of the Legislature of Louisiana (No. 74) approved September 14th, 1868, the Parishes of Orleans, Jefferson and St. Bernard, were territori-ly united in one district for the purpo-e of police government therein, called the "Metropolitan Police District of New Orleans, State of Louisiana;" that the government of said district for police purposes, was vested in a board of commissioners, styled "The Board of Metropolitan Police."

2d. That said board was required to appoint all the officers and employees of the police force, required in said district, and their salaries which was prescribed by the act, were required to be paid monthly; that by said act, and acts of said Legislature, supplementary to and amendatory thereof, said board was required to make, annually, an estimate of the expenses of maintaining a police force in said district, and to apportion the same to the several cities and parishes, within said district, and said cities and parishes were required by said acts, to promptly pay, and to provide the means for promptly paying the amounts thus apportioned to them.

88 3d. That said City of New Orleans was a Municipal Corporation created by the laws of said State of Louisiana, and was within said Metropolitan Police District; that said board from and after its creation, as aforesaid, annually made the estimate of

expenses of maintaining said Metropolitan Police, and apportioned the same to said several cities and parishes as required by said acts.

4th. That the apportionments made by said board, as aforesaid, to the City of New Orleans, were as follows, viz:

For the year 1869	$877,595.00
For the year 1870	838,274.07
For the year 1871	809,932.19
For the year 1872	724,460.90
For the year 1873	718,017.00
For the year 1873, additional	203,600.65
For the year 1874	713,208.40
For the year 1874, additional	182,886.53
For the year 1875	587,723.00
For the year 1876	500,000.00
Total	$6,155,697.74

And when said apportionments were made and notified, as they were, to said city, she became liable to said Board of Metropolitan Police for the amount thereof.

5th. That like apportionments of police expenses, were made by said board to the cities of Jefferson and Carrollton, which were within said Police District for which apportionments, they each became liable to said board, but afterwards, by acts of said Legislature, said cities were consolidated with the City of New Orleans, which, by said acts of consolidation was made liable for their debts, including those created for their apportionment of police expenses aforesaid.

Your orator has not sufficient information to state the amount of the liabilities thus created, and imposed upon said city of New Orleans, but avers, upon information and belief, that it was sufficient to pay and discharge the proportion of police expenses due by each of said cities.

6th. That like apportionments were made by said board, of
89 police expenses to be paid by said Parishes of Jefferson and St. Bernard, and the City of Kenner, all within said Police District and notice given to each of said corporations thereof, as required by law, and thereupon they became and were absolutely liable to said board for the amount of their respective apportionments; but what the amount of said apportionments were, complainant is unable to s-ate, but avers that they were sufficient to meet the annual police expenses within their respective jurisdictions.

7th. That while said cities and parishes, within the Police District, were required to "promptly pay, and to provide the means for promptly paying" their respective apportionments, the councils of sais cities and the police juries of said parishes were authorized to raise the amounts required for that purpose, by levying taxes upon the persons and things subject to taxation, within their respective jurisdictions, and for that purpose did severally make such levies, but whether for sufficient amounts to meet their respective liabilities, complainant is unable to s-ate; but he avers that said city of New Orleans, annually during the whole period of the existence of said

board, included in her budget of expenditures the amount thus apportioned to her, and in pursuance of said authority, levied taxes for the purpose of paying the same; and collected and paid upon account of her apportionments, large sums of money, but not enough to discharge her liability in the premises; there still being due upon account thereof the sum of nine hundred and forty thousand three hundred and seventy nine and 60-100 dollars; and the defendant the present city of New Orleans, successor of said city, as existing at the time said appointments were made is liable therefor.

8th. That by the provisions of an act of said Legislature approved February 7th, 1869, and subsequent acts, all warrants issued
90 in payment of salaries of officers, employees and members of the Metropolitan Police and for the expenses of said board, were made receivable for all parish and Municipal taxes and licenses, within the limits of the Metropolitan Police District, and for all debts due, or to become due to the parishes and cities within said district, not exceeding in any one year the amount of their respective apportionments for that year.

9th. That said Board of Metropolitan Police force in said district, *and* appointed and employed the officers and members thereof, who entered upon their duties and rendered services, under contracts therewith, to be paid the salaries fixed by law for such employment, such contracts being made upon the faith of its revenues applicable to their payment being unimpaired.

10th. That by an act of said Legislature (No. 35) approved March 31st, 1877, said act No. 74 of September 14th, 1868, establishing said Metropolitan Police District; said act No. 44 of February 27th, 1869, making all warrants issued in payment of Metropolitan Police salaries and expenses, receivable for all Municipal and Parish taxes within the District; said Act No. 94 of March 30th, 1870, requiring the several cities and parishes within the district, to pay and to provide the means for the payment of their apportionments of the expenses of the Board of Metropolitan Police; said Act No. 16 of March 24th, 1875, entitled "an act to enforce the payment by the city of New Orleans and the several cities and parishes of the Metropolitan Police district of the apportionment made upon them by the Board of Metropolitan Police, and for other purposes," as well as other, acts amendatory of said above enumerated acts, or upon the same subject matter, were repealed; and said Board of Metropolitan Police was abolished, and no provision was made for the liqui-
91 dation of its affairs or the payment of its debts.

11th. That said repealing act was in violation of Section 10, Article 1 of the Constitution of the United States, in that it impaired the obligation of the contracts made by said Board of Metropolitan Police, with its officers and employees, and others, to whom it was indebted, and who had contracted with and rendered services to said Board, upon the faith of said provisions of law for the enforced payment and collection of the sums due to it as aforesaid, from the several cities and parishes within said dis riet, out of which funds only, they could be paid and to that extent said act was and is null and void.

12th. That said city of New Orleans has, from day to day and from year to year, ever since the passage of the repealing act of March 31st, 1877, aforesaid, continued to collect the taxes levied as aforesaid, for the purpose of paying the apportionments of said city for Police expenses, as aforesaid made, and notified thereto; and is now making such collections, and enforcing the payment of taxes levied for that purpose, and now has a large sum of money thus realized, which is applicable to the payment of said city's indebtedness to said Board of Police, and ought to be distributed among the creditors of said Board, in reduction of their claims, including those of your orator.

13th. That said Board of Metropolitan Police was a body corporate under the laws of its creation, and by the repeal of said laws, ceased to be, and had and has no representative or successor, against whom suit might have been or may now be brought for the establishment of the demands of the complainant herein, and he is remediless, except in this Hon. Court where matters of this nature are cognizable and relievable; wherefore he brings this his bill in behalf of himself and all other creditors of said Board, similarly situated who may come in and contribute to the expenses of this suit.

92 14th. That said Board being abolished, and without any succession or representative as aforesaid, and said city of New Orleans having collected a large sum of money, to-wit: the sum of $——, raised by taxation for and applicable to the payment of its apportionments of police expenses for the year- 1874, 1875 and 1876, Abraham Brittin, a creditor of said Board of Metropolitan Police applied to the Civil District Court for the Parish of Orleans, Louisiana, for the appointment of a receiver of said Board for said funds and said city consenting thereto, by the order and decree of said Court, Richard F. Harrison was appointed such receiver; that in such capacity he brought suit against the city of New Orleans, for the recovery of such taxes as had been collected by the city, for said years, for account of said Metropolitan Police Board, and by the judgment of the Supreme Court of Louisiana (40 Louisiana Annual Reports, page 512) recovered from said city upon that account, the sum of $30,944.94, and afterwards, to-wit: the — day of July, 1888, said city paid to said receiver the amount of said judgment, the proceeds whereof, said receiver on the 25th day of July, 1888, paid to and distributed among the holders of claims against said Board, and afterwards said city voluntarily paid to said receiver without suit, sundry other small sums derived from the collection of such taxes for the purpose of having the same applied to the payment of the liabilities of said Board, but the amount of such payment is unknown to complainant, but upon information and belief, he avers that it does not exceed one thousand dollars. And complainant further shows that afterwards, to-wit: on the 27th day of December, 1890, said Harrison died, and afterwards Joseph P. Horner was appointed receiver in his stead, but his appointment was rescinded before he acted, and said Board of Metropolitan Police is now without

93 any successor or legal representative, and its affairs are no longer under any administration whatsoever.

15th. That one, Lew Goldstein, as holder of a large amount of Metropolitan Police, and as assignee of sundry creditors of said Board of Metropolitan Police, on the 21st of October, 1886, brought suit in the 26th Judicial District Court, in and for the Parish of Jefferson, Louisiana, against all the corporations made defendants herein in behalf of himself and all other creditors of said Board, similarly situated, praying the appointment of receiver, and the enforcement of the liabilities of said several defendants for the purpose of paying and discharging the obligations of said Board, and citations were served the 26th October, upon each of said defendants, to appear and answer in said suit, and afterwards said suit was removed into this Hon. Court, where holders of warrants and claims against said Board amounting to $—— appeared before the Master, under the orders of the court, and proved their demands, as will appear by said Master's report now on file, which is here referred to for greater certainty; that the case as against the city of New Orleans, was afterwards dismissed upon the ground that this Court had not acquired jurisdiction thereof, but as to all the other defendants the same still remains pending and undisposed of.

16th. That your orator is the holder and owner of Metropolitan Police warrants, certificates, and claims against said Board of Metropolitan Police, said warrants and certificates having been issued by said Board for services rendered, and supplies furnished, and said claims being for services rendered and supplies furnished thereto, under contracts therewith a list of said warrants, certificates
94 and claims amounting to $5032.90 being annexed hereto as exhibit A and made part of this bill; that all of said warrants, certificates and claims were included among those held and sued upon by said Lew Goldstein, in his above named suit, your Orator having since acquired the same which still remain due and unpaid.

17th. And your Orator further shows and avers, that there are now outstanding, due and unpaid warrants and certificates issued by said Board of Metropolitan Police, and sums due and owing by it for services rendered and supplies furnished thereto, a large amount, the exact sum thereof being unknown to your Orator, but he avers upon information and belief, that including interest thereon, the amount exceeds two hundred thousand dollars; that said several cities and parishes within the Police District being required by law to receive in payment of all taxes and licenses and debts due to them, the warrants issued by said Board as aforesaid, and by the Act of the Legislature No. 33, approved February 26th, 1874, all restrictions upon the amount to be so received were removed; and it is claimed by the City of New Orleans, that in consequence thereof she received more of such warrants in payment of her taxes, than her just proportion. And your orator avers, that the only assets of said Board of Metropolitan Police, at the time it was abolished, were the amounts due to it by said City of New Orleans, and by the other defendants, as herein stated; that the aggregate amount of said indebtedness to said Board largely exceeds the total amount of its debts and liabilities; that law and equity require that the amount of said assets should be ascertained, and the just proportion due by each of the de-

fendants adjusted, and that the liabilities of said Board of Police be fixed and determined, and paid out of said assets; and if the same exceed the liabilities of the board, that said defendants be
95 required to pay their pro rata shares thereof.

In consideration whereof and inasmuch as your Orator has not a complete and adequate remedy at law; to the end whereof, that the said defendants may, if they can show why your Orator should not have the relief hereby prayed, and that they and each of them, may full, true and perfect answer make, to all singular the premises, (but not under any oath, the same being waived) that an account may be taken under the direction of this Hon. Court, before one of the masters thereof, or otherwise as the court may direct, of all the debts, liabilities and unpaid dues of every kind, of said Board of Metropolitan Police including the warrants, certificates and claims of your Orator, and of all others who may come in and avail themselves of the decree to be made herein, and contribute to the expense of this suit; that a like account may be taken of the amount due by each of said defendants to said Board of Metropolitan Police for the balances of their unpaid apportionments of police expenses, as well as of all police taxes collected by them, and withheld from said board; and that said defendants be decreed to pay into the hands of some discreet person, to be appointed receiver by this Hon. Court, their several pro rata shares of the amount so found to be due to creditors of said Board of Metropolitan Police, including all costs of the administration thereof, and that the funds thus realized, be applied to the payment of your Orator's said warrants, certificates and claims and of such other persons as may be creditors of said Board, and who shall come in and establish their claims, and also to the payment of interest thereon, and all expenses of administration and costs.

May it please your Honors to grant unto your Orator, writs of subpœna directed to said City of New Orleans, to said City
96 of Kenner, to said Police Jury of the Parish of Jefferson, and to said Police Jury of the Parish of St. Bernard, all municipal corporations of the State of Louisiana, therein and thereby commanding them and each of them on a day to be named and under a certain penalty therein specified, to be and appear in this Hon. Court, then and there to answer all and singular the premises, and to stand to abide and perform such order and decree as to your Honor- shall seem meet.

And your Orator prays such other and further, and general relief as the nature of the circumstances of the case may require, and as to equity and good conscience may be agreeable.

And your Orator will ever pray, etc.

(Signed) ROUSE & GRANT,
Solicitors for Complainant.

(Signed) CHAS. LOUQUE,
Of Counsel.

97 *Plea of City of New Orleans.*

Filed April 6th, 1891.

U. S. Circuit.

No. 11983.

H. W. BENJAMIN
versus
THE CITY OF NEW ORLEANS.

Now comes the City of New Orleans, the defendant herein a political corporation created by law by protestation not confessing all or any of the matters in the complainant's bill to be true in such manner and form as therein alleged, do plead thereunto and to the jurisdiction of this Court to entertain the complainant's bill and for cause of plea, -ay:

That previous to the filing of the complainant's bill the Civil District Court for the parish of Orleans, on the 2d January, 1891, in the suit entitled The State *ex rel.*, A. Brittin *vs.* The City of New Orleans, No. 14,004 of the docket, upon the application of ce-tain parties, to wit: John Klein, *et als.*, appointed Joseph P. Hornor as Receiver, to collect and apply certain alleged amounts claimed to be due by the City of New Orleans to said Board for and on account of the apportionments against the City for the support of the Metropolitan Police, and for and on account of the Metropolitan Police taxes directed to be levied by the city, that subsequently said Civil District Court revoked and annulled said appointment of said Hornor, but from the judgment annulling said appointment -aid parties on whose application said appointment was made, claiming to be holders of Metropolitan Police warrants, and to be creditors for the amount thereof of the said Board, and -aid Hornor appealed to the Supreme Court of the State which appeal is now pend-

98 ing and awaiting decision, all of which more fully appears by the petitions, the judgments and petition of appeal in said suit and copy thereof are herewith filed made part hereof, and to which reference is craved for fuller explanation and greater certainty—and this defendant shows that the complainant alleging himself to be the holder of Metropolitan warrants by his bill herein filed, prays that this Court will decree in respect to said alleged amounts claimed to be due said Board, and will direct the application thereof, and appoint a Receiver therefor, and claims the same relief as is demanded by said warrant holders in said previous proceeding in the Civil District Court and Supreme Court, that it follows that prior to and at the time of the filing of the bill herein, the said Civil District Court and the Supreme Court were already and are now seized and vested with exclusive control and jurisdiction over and in respect to the subject matter of the said bill, and this Court is wholly without jurisdiction to entertain said bill or grant

the relief or any part thereof thereby prayed—and therefore this defendant does plead said prior proceeding in and appointment of Receiver by said Civil District Court, and said pending appeal in the Supreme Court in bar of complainant's bill.

Wherefore defendant prays the judgment of this Court, whether any further or other answer than this plea is required and prays that this plea to this jurisdiction be maintained and the bill be dismissed with full reservation to answer if this plea is over-ruled and for general relief.

(Signed) CARLETON HUNT,
City Attorney,
HENRY C. MILLER,
Solicitors for Defendant.

99 Henry C. Miller and Carleton Hunt, solicitors for defendant, do certify in their opinion the foregoing plea is well founded in point of law.

(Signed) CARLETON HUNT.
HENRY C. MILLER.

Joseph A. Shakespeare, Mayor of New Orleans, deposes and says: the foregoing plea is not interposed for delay and is true in point of fact.

(Signed) JOSEPH A. SHAKESPEARE, *Mayor.*

Sworn to and subscribed before me, this 6th day of April, 1891.

[SEAL.] (Signed) CHAS. H. SHIELDS,
Notary Public.

Endorsed: And now comes Henry W. Benjamin, Complainant, in this cause by Rouse & Grant, Solicitors, and sets down the within plea for argument. New Orleans, April 9th, 1891.

Plea of City of Kenner.

Filed April 6th, 1891.

United States Circuit Court.

No. 11983.

W. H. BENJAMIN
versus
THE CITY OF NEW ORLEANS.

Now comes the City of Kenner, the defendant herein, a political corporation created by law, by protestation, not confessing all or any of the matters in the complainant's bill to be true in such manner and form as therein alleged, do plead thereunto and to the jurisdiction of the court to entertain the complainant's bill and for cause of plea, says:

That previous to the filing of the complainant's bill, the
100 Civil District Court for the parish of Orleans, in the suit entitled The State, *ex rel.* A. Brittin *vs.* The City of New Orleans, No. 14,004 of the docket, on the 2nd day of January, 1891, upon the application of certain parties, to-wit: John Klein, *et als.*, appointed Joseph P. Horner as Receiver to collect and apply certain alleged amounts claimed to be due by the City of New Orleans to said Board for and on account of the apportionments against the City of New Orleans, the City of Kenner and other corporations for the support of the Metropolitan Police, and for and on account of the Metropolitan Police taxes directed to be levied by the said City and corporation that subsequently said Civil District Court revoked and annulled said appointment of said Horner, but from the judgment annulling said appointment, said parties on whose application said appointment was made, claiming to be holders of Metropolitan Police warrants and to be creditors for the amount thereof, of the said Board; and said Ho-ner appealed to the Supreme Court of the State, which appeal is now pending and awaiting decision; all of which more fully appears by the petitions, the judgments and petition of appeal in said suit, and copies thereof are herewith filed, made part hereof and to which reference is craved for fuller explanation and greater certainty,and this defendant shows that the complainant alleging himself to be the holder of Metropolitan Warrants by his bill herein filed, prays that this Court will decree in respect to said alleged amounts claimed to be due said Board, and will direct the application thereof, and appoint a Receiver therefor, and claims the same relief as is demanded by said warrant holders in said previous proceeding in the Civil District Court and Supreme Court:

that it follows that prior to and at the time of the filing of
101 the bill herein, the said Civil District Court and the Supreme Court were already and are now seized and vested with exclusive control and jurisdiction over and in respect to the subject matter of the said bill, and this Court is wholly without jurisdiction to entertain said bill, or grant the relief or any part thereof thereby prayed, and therefore this defendant do plead said prior proceedings in and appointment of Receiver by said Civil District Court, and said pending appeal in the Supreme Court, in bar of Complainant's bill.

Wherefore, defendant prays the judgment of this Court, whether any further or other answer than this plea is required, and prays that this plea to the jurisdiction be maintained and the bill be dismissed, with full reservation to answer if this plea is overruled, and for general relief.

(Signed) HENRY C. MILLER,
CARLETON HUNT,
Solicitors for Defendant.

Henry C. Miller and Carleton Hunt, Solicitors for defendant, do certify in their opinion, the foregoing plea is well founded in point of law.

(Signed) HENRY C. MILLER.
CARLETON HUNT.

Philip Holliday, Mayor of the City of Kenner, deposes and says: the foregoing plea is not interposed for delay and is true in point of fact.

(Signed) PHILIP HOLLIDAY.

Sworn to and subscribed before me, this 6th day of April, 1891.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

102 Endorsed: And now comes Henry W. Benjamin, complainant, by Rouse & Grant, his solicitors, and sets down the within plea for argument. New Orleans, April 9th, 1891.

Order: Pleas of Cities of New Orleans and Kenner Adjudged Bad and Overruled.

Ex-act from the Minutes of April 25th, 1891.

No. 11983.

HENRY W. BENJAMIN
versus
CITY OF NEW ORLEANS ET ALS.

This cause came on to be heard at a former day upon the pleas filed April 6th, 1891, to the bill of complaint herein by the City of New Orleans and the City of Kenner, defendants, and was argued and submitted:

Whereupon, and on consideration thereof, it is ordered that the said pleas be adjudged bad and be overruled.

It is further ordered that the said defendants be allowed until the next rule day to further plead, answer or demur.

Motion and Order to Correct Order Overruling Plea and Ordering City of New Orleans and City of Kenner to Answer.

Entered and Filed April 30th, 1891.

U. S. Circuit Court, Eastern District of Louisiana.

No. 11983.

H. W. BENJAMIN
versus
CITY OF NEW ORLEANS ET ALS.

Now come Rouse & Grant, solicitors for the complainant, and suggesting to the court that there is error in the order entered in
103 this cause on over-ruling the defendant's pleas and awarding them "to plead, answer or demur" which should be corrected, by directing them to answer.

It is therefore ordered that the entry on the minutes of the court aforesaid, under date of April 18th, 1891, be set aside; and it is now ordered that the defendants, the City of New Orleans and the City of Kenner, be assigned to answer the complainant's bill of complaint on or before the rule day in May next. *Equity Rule* 34.

Demurrer of the City of New Orleans.

Filed April 30th, 1891.

United States Circuit Court.

No. 11983.

HENRY W. BENJAMIN
versus
THE CITY OF NEW ORLEANS.

This defendant, the City of New Orleans, by protestation not confessing or acknowledging all or any of the matters in and by the said bill set forth and complained of to be true in manner and form as the same are therein and thereby set forth and alleged, says: it is advised that there is no matter or thing in the complainant's said bill of complaint contained, good and sufficient in law to call this defendant to account in this Honorable Court for the same; but that there is good cause of demurrer thereunto, and it does demur thereunto accordingly, and for causes of demurrer, says:

That the complainant's said bill of complaint, in case the same were true, which this defendant does in no wise admit, contains not any matter of equity, whereon this Court can ground any decree or give the complainant any relief or assistance as against this defendant.

104 And for further cause of demurrer, this defendant shows:

That the complainant by his said bill of complaint seeks to enforce the asserted liability of the City of New Orleans to the Metropolitan Police Board and alleged creditors, arising out of apportionments to and against the City of New Orleans for its share of the expenses of the Metropolitan Police, which apportionments the bill alleges were made by said Board, and that the City thereby became bound to pay the amounts thereof, under and by reason of the legislative acts of the Legislature of Louisiana, creating the Metropolitan Police Board and District to-wit: Act No. 74 of 1898, Section 28, *et seq.*, Act No. 92 of 1869, Sections 25, 26, 27, *et seq.*, and other acts on the same subject, and special reference is made to said acts and said sections thereof, to show the character of the asserted liability, of any, the bill al-eges to have been imposed by said acts, on the City of New Orleans.

For further cause of demurrer, this defendant shows:

That the bill complains of the repeal by the Legislature of Louisiana of the aforesaid acts organizing and relating to the Metropolitan Police Force and Metropolitan Police Board, and by reason of said

repeal the bill alleges the Metropolitan Police Board was abolished and no provision was made or now exists for the liquidation of the affairs or for the payment of the alleged debts of said Board, and the bill calles upon this Court to grant relief for the payment of said alleged debts of said Metropolitan Police Board; but this defendant shows that the only mode of payment of said alleged debts, if any, of the late Metropolitan Police Board a political body for the administration of the police of the city, is by taxes to be levied for that purpose, and if it be true as asserted by said bill, that no provision now exists for the payment of said debts, this Court has no power to direct the levy of taxes for said asserted debts, or any power whatever to grant any relief in respect to the matters of which the bill complains.

105

Wherefore, and for divers other errors and defects in the complainant's said bill of complaint contained, and appearing on the face thereof, this defendant does as aforesaid, demur in law thereunto, and humbly crave the judgment of this Honorable Court, whether it is compellable or ought to make any answer thereunto otherwise than as aforesaid.

And this defendant humbly prays to be hence dismissed with costs.

(Signed) CARLETON HUNT,
HENRY C. MILLER,
Solicitors for Defendant, the City of New Orleans.

We hereby certify that in our opinion the above demurrer is well founded in point of law.

(Signed) CARLETON HUNT.
HENRY C. MILLER.

Joseph A. Shakspeare, Mayor of New Orleans, deposes and says: that the above demurrer is not interposed for delay.

(Signed)) JOSEPH A. SHAKSPEARE, *Mayor.*

Sworn to and subscribed before me, this 29th day of April 1891.

[SEAL.] (Signed) CAS. H. SHIELDS,
Notary Public.

Endorsed: And now comes the Complainant, Henry W. Benjamin, by his Solicitors, Rouse & Grant, and sets down the within demurrer. New Orleans, May 6th, 1891.

106 *Answer of City of New Orleans.*

Filed May 16th, 1891.

United States Circuit Court.

No. 11983.

HENRY W. BENJAMIN
versus
CITY OF NEW ORLEANS ET ALS.

The Answer of the City of New Orleans, One of the Defendants Herein.

This defendant, the said City of New Orleans saving and reserving to itself now and at all times all manner of advantage and benefit of exception and otherwise that can be had and taken to the many errors, uncertainties and insufficiencies in complainant's bill contained, for answer thereunto or unto so much and such parts thereof as is material for this defendant to make answer unto; answers and says,

This defendant shows that on the 21st of April, 1885, R. F. Harrison as Receiver of the Metropolitan Police Board, instituted suit against this defendant in the Civil District Court for the Parish of Orleans, for the same cause of action as stated in the bill, that is the asserted liability of this defendant for the apportionments against it by the Board of Metropolitan Police, and the alleged liability of this defendant, for Metropolitan Police, taxes levied under the legislative acts organizing the Metropolitan Police Board and District, that in said suit there was a final determination of said cause of action by the judgment of the Supreme Court of the State rendered on the 11th of May, 1888, on the appeal taken by this defendant, which final judgment determined that defendant was liable to the Metropolitan Police Board and to the Receiver thereof for and by reason of said cause of action, in the sum of thirty thousand nine hundred and forty-four dollars with interest, and no more, which judgment was satisfied by this defendant and all controversy respecting
107 the cause of action aforesaid now asserted by complainant was thus ended and closed; all of which more fully appears by the record of said suit of R. F. Harrison, Receiver, *vs.* The City of New Orleans, No. — of the docket of the Civil District Court, and the aforesaid final judgment of the Supreme Court thereon, to which special reference is made for fuller explanation and greater certainty, and this defendant shows that said Receiver represented in said suit all the alleged creditors of the Metropolitan Police Board, and if the complainant has any claim whatever against said Board, he in common with other alleged creditors, was represented by said Receiver, in said suit, and said final judgment is binding and conclusive upon the complainant and all others claiming to be creditors of the Met-

ropolitan Police Board, and said judgment is now pleaded and relied on as *res judicata* against plaintiff's demand, and this defendant prays that the same effect be given to the said *res judicata* as if pleaded separately to the bill of complaint.

And this defendant further brings to the notice of the court, that the matters and things alleged in complainant's bill, in case the same were true which is in no wise admitted but denied, that relief in respect thereto would have to be sought at law and not in Equity.

And without prejudice and subject to the defences herein before presented and again insisted upon, this defendant further answering admits that the Act of the Legislature of Louisiana, No. 74 of 1868 was as stated in the first article of the bill and special reference is made to said act to more particularly show its character.

This defendant further answering admits that by said act, the Board of Metropolitan Police thereby created, was required to appoint and fix the salaries of the police force requisite in the
108 Metropolitan Police District organized by said act, and this defendant shows that at the date of said act and during the entire period of the existence of said Metropolitan Police Force and District, the power of taxation of the City of New Orleans for all purposes was limited by law, and only the just proportion of the said taxes collected by the City, could be or was required to be applied to the support of the Metropolitan Police and this defendant admits that subject to that limitation said Metropolitan Police Board was required to apportion the share of the expense of the Metropolitan Police to be borne by the City of New Orleans not to be in excess of said proportion applicable to the support of the said Metropolitan Police Board was required by said act to make an annual estimate of the expenses of maintaining the Metropolitan Police Force in said District, and to apportion the same to the City and parishes composing said District, and further answering defendant shows that the City of New Orleans had at no time nor has it now any resources to pay the expenses of its police establishment save the funds derived from the taxes provided by law, and further answering defendant shows it was by said act and other acts amendatory thereof, required that the City levy annually the Metropolitan Police taxes for the support of the Metropolitan Police force in accordance with such legal apportionments against the City for its share of the expenses of said police establishment as said Board might make, subject to the aforesaid limitation on the Board restricting such apportionments to that amount only and no more, susceptible of being applied to the said Police expenses, and said City was required by said acts up to the amount of said legal and limited apportionments, to receive in payment of all the taxes due to it, Metropolitan Police Warrants issued by said Board for the salaries of its officers and other expenses, and the City was not liable or accountable for or required to make any payment of
109 said *of said* apportionments or any part thereof, save from and out of the amount of and to the extent only of said Metropolitan Police taxes actually collected, to be accounted for or paid by the City in cash or by said Metropolitan Police warrants

received by it, and save and except the levy and proper efforts to collect said Metropolitan Police taxes and to pay over and account for in the manner stated, said taxes to the extent collected, no other obligation whatever was imposed by said acts and this defendant denies to be true that by said act the City was required to pay or to provide the means for payment of the amounts apportioned by said Board save and except said obligation to account for Metropolitan Poli-e taxes actually collected as this defendant has herein set forth.

This defendant further answering shows that for the years 1869 to 1876 both inclusive, the limitation of taxation for all purposes authorized by law to be imposed, was from one and a half to two per centum on every one hundred dollars of valuation; that the assessed valuation of all property of the City of New Orleans subject to taxation for said period did not exceed one hundred and twenty million of dollars, that the legal and necessary expenses of the Metropolitan Police force in said years, did not req-re more than three hundred thousand dollars and by reason of the aforesaid limita-ion of taxation it was not competent for said Metropolitan Police — more than three hundred thousand dollars and any apportionment in any said years in excess of said amount was illegal and void to the extent of said excess; this defendant has no knowledge, information or belief whether or not the apportionments alleged in the bill were made by the Metropolitan Police Board, but if made each and every one of such apportionments are palpably in excess of the amount required or susceptible of being apportioned
110 against *against* this defendant for the support of said Metropolitan Police, and said years was illegal, void and null to the extent of the aforesaid excess whether or not said apportionments were ever notified this defendant has no knowledge, information or belief, but said notification if given was void and null the same as the apportionments themselves, and this defendant again denies to be true that theis defendant became or is — ever was liable to said Metropolitan Police Board for the amount of said apportionments, or for any part thereof, but in fact the only liability of the City to said Metropolitan Police Board was as this defendant has set it forth and no further.

This defendant believes it to be true that apportionments were made by the said Board against the town of Jefferson and Carrollton within said Metropolitan Police District, but at the period of said apportionments the power of taxation of each of said towns was limited, and there was no power in said Board to apportion to said towns a greater amount than was capable of being devoted to the support of the police from limited taxation that the apportionments against said towns was far in excess of said amount that said towns could apply to police purposes, and beyond the power of the Board to impose and illegal and void to the extent of the amount capable of being apportioned, and this defendant denies to be true that said towns or either ever became liable for said apportionments. Defendant admits the City of New Orleans was liable to said Metropolitan Police Board to the extent of said Metropolitan Police taxes actually collected, but no, further, and admits that the acts of con-

solidation made the City of New Orleans liable for the legal debts of the town- of Jefferson and Carrollton, but not for said illegal apportionments against said towns nor for any amount whatever to said Metropolitan Police Board, save to the extent of *of*
111 said Metropolitan Police taxes actually collected, all of which have long since been accounted for, and with this statement this defendant denies "that by said acts of consolidation the City of New Orleans was made liable for the debts of said towns including those created for their apportionments for police expenses aforesaid," save the liability as this defendant as set it forth other than which none ever existed.

Further answering this defendant shows that it has already set forth in this answer all said acts required of said defendant and subject to the allegation in this answer in that regard defendant denies to be true that it was required to pay or provide the means of payment of the aforesaid apportionments of said Board, but on the contrary defendant again affirms that its sole obligation was to levy within the limits herein before stated and to pay over said Metropolitan Police taxes as might be actually collected and no more, and this defendant admits that under said act it was authorized to levy the Metropolitan Police taxes to an amount sufficient to meet the legal apportionments of said Metropolitan Police Board, but had no power to levy taxes for the aforesaid excessive and illegal apportionments, that this defendant did levy for each year of the years of the existence of said Metropolitan Police Board, Metropolitan Police taxes greatly in excess of such taxes that could legally have been levied, and it is true that the City of New Orleans during the existence of said Board did undertake to include in her annual budgets certain amounts stated in the annexed exhibit alleged to be for said apportionments, but each of said amounts was far in excess of the amount that could be legally apportioned and was void and of no effect, and save as stated, defendant denies to be true that said City of New Orleans annually during the whole period of the existence of said Board included in her budget of ex-
112 penditures, the amount apportioned to her by said Police Board, and in pursuance of said authority levied taxes for the purpose of paying the same.

And defendant further answering, shows that in due course it collected a large portion of the Metropolitan Police taxes, part in cash and part received in said Metropolitan Police warrants directed to be received by the city under the restrictions hereinbefore stated for taxes due to it, and this defendant in regular course said Metropolitan Police taxes were collected, made large payments and settlements to and with said Board of Metropolitan Police through its proper representatives, and R. F. Harrison the Receiver of said Metropolitan Police taxes, and this defendant liable only for the amounts of said taxes actually collected and for no more, the amount thereof being shown by the exhibit herein filed, this defendant shows that by the receipt of said Metropolitan Police warrants in payment of taxes due and by said settlements and payment to said Board and subsequently to said Receiver, has fully discharged said

liability and accounted for all said Metropolitan Police taxes ever collected in cash or in said Metropolitan Police warrants, the said Metropolitan Police warrants and said payments and settlements aggregating in fact an amount in excess of all said Metropolitan Police taxes ever collected, and the amount of said taxes collected for the years 1868 to 1876, inclusive, the amount of said Metropolitan Police warrants received, and the amounts of said payments and settlements by this defendant of said collected taxes with all the particulars relative thereto is herewith filed, to which special reference is made for fuller explanation and greater certainty; and this defendant save and except and subject to what is stated herein, denies to be true that it collected and paid upon account of said apportionments large sums of money, but not enough to discharge her liability in the premises, or that there is still due upon
113 account thereof the sum of nine hundred and forty thousand three hundred and seventy-nine dollars and sixty cents or any part thereof, or that defendant, the present City of New Orleans, the successor of the City as existing at the time *of* said apportionments were made, is liable for said amount or any part thereof, but on the contrary this defendant shows its full discharge of all its liability to said Metropolitan Police Board arising out said acts, and instead of there being any indebtedness to said Metropolitan Police Board or arising out of said apportionments, in point of fact this defendant has more than discharged all liability in the premises, and there is not a dollar of said pretended indebtedness alleged in the bill.

Defendant further answering admits that by the acts of the Legislature of Louisiana No. 69 of 1869 No. 41 of 1870 Regular Session, Metropolitan Police warrants for the payment of salaries of the officers, employees and other expenses of the Board of Metropolitan Police were made receivable for all parish and municipal taxes and licenses, and for the debts due said municipal corporation not however exceeding the amount of the limited apportionments by law authorized to be made by said Board as hereinbefore set forth; but not the illegal and excessive apportionments actually made as hereinbefore set forth; this defendant further answering admits that said Metropolitan Police Board appointed and employed the officers and members of the police force in *said* district under contracts for such services, but the said Metropolitan Police Board made contracts to a large amount far in excess of the power of said Board and to the extent of said excess said contracts were void, and this defendant denies that the contracts of said Board save to the extent permitted by law, were made upon the faith *of* its revenue applicable to their payment being unimpaired, but said contracts were greatly in excess of
114 the revenues applicable to pay the expenses of the Metropolitan Police Board and to the extent of said excess were void.

Further answering defendant admits that by the act of the Legislature of Louisiana No. 35 of 1877, the various acts organizing the Metropolitan Police Board, were repealed; but all the provision for the payment of said Metropolitan Police was the levy of the Metropolitan Police taxes authorized by law, and said taxes had already been

levied far in excess of taxes that should have been imposed, and the repealing legislature did not interfere in any manner with the levy and application of said taxes to the extent that they could be collected to the payment of the legal obligations of said Metropolitan Police Board, and with this statement and a reference to said repealin gact, this defendant denies the allegation in the bill that by such repealing legislation, no provision was made for the liquidation of the affairs of said Board or payment of its debts.

This defendant again affirms that said repealing act did not interfere in any manner with the means of payment of all lawful obligations of said Board, nor with the right of those who had made lawful contracts that is to the extent authorized by law with said Board, and this defendant again refers to the illegal and void apportionments of said Board, and to the alleged contracts made by it, far in excess of the means applicable to the support of the Metropolitan Police, and far in excess of their power, and denies to be true that said repealing act was in violation of the Constitution of the United States or "impaired the obligation of the contracts of said Board with its officers and employees who had contracted with and rendered services to said Board upon the faith of said provisions of law for
115 the enforced payment and collection of the sums due to it from the several cities and parishes within said district," and denies that said act was void and null in any respect or to any extent.

This defendant further answering admits that from and after said repealing legislation, this defendant continued to collect the Metropolitan Police taxes levied as set forth herein but this defendant has paid over all it has ever collected to those authorized to receive it as set forth herein, and in said exhibit, and said collections have all been paid over for the purpoes of providing the means to pay the legal apportionments which said Board was authorized to make, but not the grossly illegal aforesaid apportionments actually made by the Board, and defendant with the statement denies "that this defendant is now making such collections and enforcing the payment of taxes levied for that purpose, and now has a large sum of money thus realized, applicable to the payment of the City's pretended indebtedness to said Board of Metropolitan Police, and ought to be distributed among the creditors of said Board;" and this defendant shows that all said Metropolitan Police taxes to the extent susceptible of collection, have as this defendant believes already collected, and all have been accounted for prior to the filing of this bill, and this defendant shows that all said Metropolitan Police taxes it has or can collect is shown by said exhibit and the fact is that this defendant has no money whatever derived from said taxes in its hands, and this defendant denies "that this defendant now has a large or any sum of money thus realized, applicable to the payment of the city's pretended indebtedness to said Board of Police, and ought to be distributed among the creditors of said Board."

This defendant refers to the acts organizing the Metropolitan Police Board, to show the character of said Board, and also to the repeal of said acts, and submits whether the matters alleged in
116 the bill entitle the Complainant to aid in this Court or any Court; this defendant admits that it had collected a large

amount of Metropolitan Police taxes for 1874, 1875 and 1876, applicable to the payment of the legal apportionments of said Board, but denies that the said fund was applicable to payments of the aforesaid illegal apportionments made by the Board, that in that condition a Receiver for said taxes was applied for and appointed by the Civil District Court of the City of New Orleans, to-wit: R. B. Harrison; that said Receiver brought suit against the City for said Metropolitan Police taxes of 1874, 1875, 1876, and recovered Thirty thousand nine hundred and forty-four dollars and forty cents for said taxes, and the said amount was long since paid by the City to the Receiver, and the same has been distributed by him to the creditors, entitled thereto, and further answering defendant avers that the City after said judgment and payment thereunder, paid over other amounts derived from said taxes, and all that the City ever collected has been paid over as already shown, and defendant denies that said amount paid over since said judgment does not exceed One thousand dollars, but all of said taxes collected be defendant before or since judgment and payment thereunder, are shown by the exhibits herewith filed, to which reference is again made for fuller explanation and greater certainty; defendant further admits the death of said Harrison, the subsequent appointment of Joseph P. Horner as Receiver; but avers said appointment of said Horner was illegal and has since been rescinded by the Civil District Court; defendant further answering admits the institution of the suit in this Court by L. Goldstein claiming to hold Metropolitan police warrants, and to be the assignee of such warrants, and that the suit was brought in the
117 26th Judicial District Court for the parish of Jefferson against the Complainant and the other defendants herein claiming the appointment of a Receiver, and the enforcement of the pretended liability of said Metropolitan Police Board, and said suit was removed into this Court; whether citations were or not issued as stated in the bill, defendant refers to the record, but defendant avers that this Court had no jurisdiction whatever of said suit, and it was so adjudged; defendant admits that the asserted pretended creditors of said Board appeared before the Master and offered proof of their demands, but whether the same were or were not true, this defendant submits is a question for this Court, but this defendant avers that all said demands were and are in excess of the limitation on said Board, and beyond the power of said Board to create.

Defendant further answering says that whether or not the complainant is the holder and owner of Metropolitan Police warrants and certificates to the amount stated in the bill for alleged debts or alleged supplies furnished, or whether said warrants and certificates the complainant claims to hold were or not included in those claimed to be held and sued upon by said Goldstein, and whether or not complainant has acquired them, this defendant has no knowledge, information or belief save as stated in the bill, but this defendant again avers that said Board issued a large amount of illegal warrants and certificates far in excess of their power, and of the limitation upon them as already stated, and if the complainant holds such the war-

rants and certificates, defendant denies their validity and charges they are illegal and void.

And further answering this defendant says whether or not there are outstanding warrants and certificates of said Metropolitan Police Board to the amount of two hundred thousand dollars, this defendant has no knowledge, information or belief, save as charged in
118 the bill, but defendant again affirms that if there are such warrants and certificates extant, they are illegal because issued in excess of the aforesaid limitation, and power of the Board, and have no obligatory force, and subject to those allegations defendant denies to be true, the allegation in the bill "that said several cities and parishes within the Police District being required by law to receive in payment of all taxes, licenses and debts due to them, the warrant issued by said Board and by the Act of the Legislature, No. 23 of 1874, all restrictions upon the amount to be so received were removed," as to the requirements of the acts organizing the Metropolitan Police Board in reference to the receipt by the defendant of Metropolitan Police warrants, and as to the pretended removal of all restrictions in that regard defendant refers to said acts for answer to that part of the bill, but denies to be true that all restrictions on the amount of said warrants received by the City was removed, but on the contrary the amount to be received was at all times restricted and limited as in this bill has been set forth; defendant refers to the exhibit accompanying this answer to show the amount of warrants received by the City, and avers that the amount which said Board was entitled to issue and in this sense, admits the City did receive more than she should have received and more than her just proportion; defendant believes and charges that when said Board was abolished, there was left uncollected the Metropolitan Police taxes levied by the City of New Orleans and yet uncollected, and it may be by other political corporations composing the Districts, and defendant believes to be true that said uncollected taxes were the only assets of said Board, but no amount whatever ever became due by said City to said Board in respect to said taxes until the same were actually collected and no such amounts are now due as defendant has accounted
119 and more than accounted for all said taxes ever collected; and with this statement denies to be true the charge in the bill "that the aggregate amount of said indebtedness to said Board largely exceeds the total amount of its debts and liabilities," the fact being that there is no indebtedness whatever of defendant to said Board; defendant further answering shows that the pretended liabilities of said Board are wholly illegal and void as has been heretofore set forth, and denies to be true "that law and Equity require that the amount of said assets should be ascertained, and the just proportion due by each of the defendants be adjusted and that the liability to said Board of Police be fixed and determined and paid out of said assets, or if the same exceed the alleged liability of the Board that said defendant be required to pay over the pro rata share thereof" the fact being that there are no debts and liabilities of said Board entitled in law or equity to be recognized, or any debts and liabilities of said Board of any nature, or any basis to require this defendant

to *apy* any alleged pro rata share of apportionments to said Board, or any amount whatever."

And this defendant denies all unlawful combination and confederacy in the bill charged without this that there is any matter of thing material or necessary for this defendant to make answer unto and not herein or hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant is ready to aver, maintain and prove as this Honorable Court shall direct, and prays to be hence dismissed, for costs and for a decree in its favor.

(Signed) . . JOS. A. SHAKSPEARE, *Mayor.*
HENRY C. MILLER,
Solicitor of Defendant.

120 CARLETON HUNT,
City Attorney, Solicitor for Def't.

Joseph A. Shakspeare, Mayor of the City of New Orleans being duly sworn and says: that he has read the foregoing answer and signed the same, and knows the contents thereof to be true of his own knowledge, except as to the matters therein stated to be on his information and belief, and as to those matters he believes them to be true.

(Signed) JOS. A. SHAPSPEARE, *Mayor.*

Sworn and subscribed to before me, this 16th day of May, 1891.

[SEAL.] (Signed) W. H. PASCOE,
Notary Public.

EXHIBIT.

Filed with Answer of City of New Orleans June 16th, 1891.

Statement of the amount collected of the Metropolitan Police taxes levied by the City of New Orleans under the apportionments against the City by the Board of Metropolitan Police for the years 1868, 1869 to 1876, inclusive, and of the settlements with and payments of said taxes by the city to said board through its legal representative and to R. F. Harroson, receiver, and of the Metropolitan Police warrants issued by said board received, retired and taken up by the city.

1868-1869.

The apportionment against the city by the Board of Metropolitan Police was..... $805,635.00

Under that apportionment there was delivered to the State Treasurer authorized to receive for said
121 Board, eight hundred and five thousand six hundred and thirty-five dollars in bonds of the City of New Orleans, issued under the Act No. 49, approved February 27th, 1869, which bonds were

sold and proceeds applied by the Board in payment of the salaries of officers, employees and expenses of said Metropolitan Police Force and District.

There were received by the City of New Orleans in payment of licenses and taxes redeemed and retired by the city by the issues of its bonds, Metropolitan Police warrants of 1868 and 1869 issued for the salaries of its employees, officers and expenses of said Board to the amount of..... 236,223.46

1870.

The amount of Metropolitan Police taxes collected by the city, was..... 439,961.82

Under the apportionment of the Metropolitan Police Board against the city for this year, there was received by the City of New Orleans in payment of taxes and licenses, Metropolitan Police warrants issued for the salaries of officers, employees and expen-es of said Board to the amount of..... 560,824.51

1871.

There was collected by the City of Metropolitan Police taxes for 1871..... 149,459.10

Under the apportionment of 1871 by the Metropolitan Police Board, there was received in payment
122 of taxes and licenses due to the city, and retired and cancelled by the issue of the obligations of the city, Metropolitan Police warrants issued for the salaries of officers, employees and expenses of said Board to the amount of..... 818,531.70

1872.

The amount of Metropolitan Police tax for 1872, collected by the city, was..... 545,683.86

Under the apportionment of said Board for 1872, there was received by the city in payment of taxes and licenses, Metropolitan Police warrants issued for the salaries of officers, employees and expenses of said Board to the amount of..... 726,378.55

1873.

There was collected Metropolitan Police taxes levied for 1873..... 369,260.42

Under the apportionment of Metropolitan Police Board for the year 1873 there was paid by the City of New Orleans under the agreement and by the direction of said Board of Metropolitan Police, the pay rolls of the Metropolitan Police Force, the following amounts:

February 24th, 1873	$51,640.84	
May 27th, 1873	36,558.39	
		88,199.23
And there was received under said apportionment of 1873, Metropolitan Police warrants issued for the salaries of officers, employees and expenses of said Board to the amount of		743,430.04
		$831,629.27

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Summary

Of collections of Metropolitan Police taxes of 1868-1869 to 1873, inclusive, and of Metropolitan Police warrants received and taken up by the city under the apportionment of said years, and of the payments to and settlements of said years with said Board of Metropolitan Police by the city.

Bonds delivered under apportionment of 1868-9 were	$805,635.05
Metropolitan Police tax collected 1870	439,961.82
Metropolitan Police tax collected 1871	149,459.10
Metropolitan Police tax collected 1872	545,683.86
Metropolitan Police tax collected 1873	369,262.42
	$2,310,002.25

1869.

Amount of city bonds delivered to said Board in settlement of apportionment for that year	$805,000.00
Metropolitan Police warrants received and taken up under apportionment of 1869	236,223.46

1870.

Amount of Metropolitan warrants received and taken up under the apportionment of 1870	560,824.51

1871.

Amount of Metropolitan Police warrants received and taken up	818,531.70

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1872.

Amount of Metropolitan Police warrants received and taken up	726,578.55

1873.

Amount of Metropolitan Police warrants received and taken up	831,629.27
	$3,978,787.49

1874.

The Metropolitan Police tax levied by the City in 1874 was — per cent., on an assessment of.....	
The amount of said tax collected by the City was....	537,721.05
Of which Metropolitan Police tax collected, there was paid to J. H. Oglesby, Fiscal Agent of the Metropolitan Police Board.....	438,176.14
Paid to the Treasurer of the Metropolitan Police Board	48,600.79
Received in Metropolitan warrants against apportionments	42,811.12
Paid to R. F. Harrison, Receiver.....	2,557.80
	$532,145.85

Summary.

Amount collected.....	$537,721.05
Amount of payments.....	532,154.85
	$5,575.20

1875.

The Metropolitan Police tax levied by the City in 1875 was — per cent., on an assessment of.....	
The amount of said tax collected by the City 125 was	$539,583.08
There was paid by the City of New Orleans of said collection, to E. T. Murdock, Treasurer of the Metropolitan Police.....	484,717.22
Paid to R. F. Harrison.....	7,269.81
Received in Metropolitan Police warrants.....	37,466.59
	$529,453.62

Summary.

Amount of taxes collected.....	$539,583.08
Amount of payments.....	529,453.62
Excess of collections over payments.....	$10,129.46

1876.

The Metropolitan Police tax levied by the city in 1876, was — per cent. on an assessment of.....	
The amount of said tax collected by the city was...	443,623.12
There was paid by the city of said Metropolitan tax of 1876 collected, to the Treasurer of the Metropolitan Police Board.....	377,135.03
Paid to R. F. Harrison.....	47,779.15
There was received by the city against said apportionment of 1876, Metropolitan Police warrants for the amount of.....	7,601.49
	$432,515.67

Summary.

Amount of collections	$443,623.12
Amount of payments	432,515.67
Excess collections over payments	$11,107.45

126 *Summary of Deficiencies in the payment of the Metropolitan Police Taxes for the Years* 1874, 1875, 1876.

For the year 1874	$5,575.20
For the year 1875	10,129.46
For the year 1876	11,107.45
	$26,812.11

The above deficits in the collections over payments of Meyropolitan Poli-e taxes from 1874 to 1876, were all paid and settled by the City of New Orleans, under the judgment of R. F. Harrison *vs.* The City of New Orleans, rendered by the Supreme Court of the State, on the 10th of May, 1888, fixing the amount due by the city for said Metropolitan Police taxes collected and not accounted for, said payment being thirty thousand nine hundred and forty-four dollars and ninety-four cents.

Replication to Answers of Cities of New Orleans and Kenner.

Filed May 27th, 1891.

United States Circuit Court for the District of Louisiana. In Equity.

No. 11,983.

HENRY W. BENJAMIN
versus
CITY OF NEW ORLEANS ET ALS.

The Replication of Henry W. Benjamin, Complainant, to the Several Answers of the City of New Orleans and the City of Kenner, Defendants.

This Repliant reserving unto himself all and all manner of exception to the manifest insufficiencies of the said answers for replication thereunto, says: that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answers of the said defendants are untrue and
127 insufficient to be replied unto by this repliant; without this that any matter or thing whatsoever in the said answers contained, material or effectual to be replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver and prove as this Honorable Court shall direct, and humbly prays as in and by his said bill he hath already prayed.

(Signed) ROUSE & GRANT,
Solicitors for Complainant.

Ordinance No. 17, *A. S., Levying a Police Tax for the Year* 1870.

Offered by City of New Orleans and Filed February 10th, 1892.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *April 19th*, 1870.

No. 17, Administration Series.

An Ordinance Levying a Special Tax of Three-quarters of one per cent. for Metropolitan Police Purposes.

Be it ordained by the Council of the City of New Orleans.

SECTION 1. That in conformity to the provisions and requirements of an act of the Legislature, approved March 8th, 1869, entitled, "An Act to amend and re-enact an Act entitled, "An Act to establish a Metropolitan Police District, and to provide for the government thereof," approved September 14th, 1868, and in order to provide the means to pay and discharge the annual estimate and apportionment, apportioned and estimated against the City of New Orleans by the Board of Metropolitan Police, convened as a board of estimate and apportionment, as provided in the twenty-seventh section of said act, which *which* apportion-
128 ment and estimate have been duly notified to the City of New Orleans, wherein it appears that the sum of seven hundred and seventy-nine thousand one hundred and thirteen dollars and ten cents is apportioned and esti-ated as the amount due, and to be paid on account of the Board of Metropolitan Police for the year ending on the thirtieth day of September, A. D., 1870, by the City of New Orleans as it existed on the first day of October, A. D. 1869, that there be and hereby is assessed and levied a special tax of three-quarters of on- per cent. upon the assessed value of all property within the City of New Orleans, both real and personal, as valued and assessed in the assessment rolls of property in the city last completed; provided, that the special tax authorized by this ordinance shall not be levied upon any property situated or assessed within the limits of the late City of Jefferson, or that portion of the Parish of Orleans, situated on the right bank of the Mississippi river, or any portion of the territory included within the present City of New Orleans upon which a special tax for the same purpose has been levied during and for the current year.

SECTION 2. *Be It Further Ordained, Etc.*, That said special tax of three-quarters of one per cent. levied by this ordinance is hereby declared to be due and exigible from and after the promulgation of this ordinance; and that the Administrator of Public accounts b-

and is hereby instructed to cause to be prepared and delivered to the Administrator of Finance, with the least possible delay, the special tax bills necessary for the enforcement and collection of said special tax; and that the Administrator of Public accounts be and is hereby authorized to employ such additional clerical force as may be necessary to accomplish the object of this ordinance; and, further,
129 that such sum of money as may be necessary therefor be and the same is hereby appropriated for that purpose, to be paid from the fund set apart as a contingent fund.

Adopted by the council of the City of New Orleans, April 9th, 1870, the following members being present and voting: Yeas: West, Shaw, Delassize, Emley, Pierce and Walton. Nays: None.

BENJ. F. FLANDERS, *Mayor.*

H. CONQUEST CLARKE, *Secretary.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *November* 24, 1891.

A true copy of Ordinance No. 17, Administration Series, adopted by the Council of the City of New Orleans. April 19, 1870.

[SEAL.] E. L. BOWER,
Chief Clerk.

Ordinance No. 642, *A. S., Levying a Police Tax for the Year* 1871. *Offered by the City of New Orleans and Filed February* 10, 1892.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *December* 22*d*, 1870.

(No. 642, Administration Series.)

An Ordinance Levying a Tax of Three-quarters *on* one per cent. for Metropolitan Police Purposes.

Whereas, Under authority of an act of the Legislature, approved March 8, 1869, entitled "an act to amend and re-enact an act entitled "an act to establish a Metropolitan Police District, and to provide for the government thereof, approved September 14, 1868," the Board of Commissioners of the Metropolitan Police District, convened
130 as a Board of Estimate and Apportionment, have made up and submitted to the Mayor and estimate of the sums required for the expenses of the Board for the year ending the thirtieth of September, 1871, amounting to eight hundred and nine thousand nine hundred and thirty-two dollars and fifty-nine cents ($809,932?59), and

Whereas, Under authority of an act of the Legislature, entitled "an act of the relief of the officers and members of Metropolitan Police," being No. 72 of the session of 1870, passed over the Governor's veto, the said Board of Commissioners have assessed this city thirty per cent. on the amount of the warrants issued by said board in their fiscal year eighteen hundred and sixty-nine, said thirty per

cent. amounting to a sum of two hundred and three thousand six hundred dollars and sixty-four cents and

Whereas, By said act of the Legislature, approved, *approved* March 8, 1869, the Council of this City is directed annually, to order and caused to be raised and collected by the tax upon the estate real and personal, subject to taxation according to law, the sums of money as aforesaid annually estimated, and apportioned as the share of this city of the total expenses of the Metropolitan Police district, therefore

Be It Ordained by the Council of the City of New Orleans That a special tax of three quarters of one per cent. be and is hereby assessed on the real and personal property, as valued in the assessment rolls of this city, to be due and payable like the other taxes of the city.

Adopted by the Council of the City of New Orleans, December 20th, 1870.

Yeas: West, Shaw, Delassize, Emley, Lewis, Walton, Bonzano.

BENJ. F. FLANDERS, *Mayor.*

A true copy:

H. CONQUEST CLARKE, *Secretary.*

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MAYORALTY OF NEW ORLEANS,
CITY HALL, *Nov.* 23, 1891.

A true copy of Ordinance No. 642 Administration Series, adopted by the Council of the City of New Orleans, December 20, 1871.

[SEAL.]

E. L. BOWER,
Chief Clerk.

Ordinance No. 1272, *A. S., Levying a Police Tax for the Year* 1872.

Offered by the City of New Orleans and Filed February 10, 1892.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *December 26th,* 1871.

No. 1272, Administration Series.

An Ordinance Levying a Tax of One-eighth of One Per Cent. for Metropolitan Police Purposes for the Year 1872.

Whereas, Under authority of an act of the Legislature approved March 8, 1869, entitled "An act to amend and re-enact an act entitled "An act to establish a Metropolitan Police District and to provide for the government thereof," approved September 14, 1868," the Board of Commissioners of the Metropolitan Police district, convened as a board of estimate and apportionment, have made up and submitted to the Mayor and estimate of the sums required for the expenses of the said board for the year ending the thirtieth of September, 1872, amounting to seven hundred and twenty-four thousand four hundred and sixty dollars and ninety cents; and

Whereas, By said act of the Legislature, approved March 8, 1869 the Council of this city is directed to annually order or caused
132 to be raised and collected by the tax upon the estate, real and personal, subject to taxation according to law, the sums of money as aforesaid annually estimated and apportioned as the share of the city of the total expenses of the Metropolitan Police district; and

Whereas, According to the decision of the Supreme Court of the State of Louisiana in the case of the State of Louisiana *ex rel.* Board of School Directors *vs.* the Mayor and Administrators of New Orleans, said decision being based upon section seven of act *No.* 42 of the Legislature, approved March 3, 1871, the total tax which the council of the city of New Orleans is allowed to levy is limited to the rate of two per cent. on the assessed value of all the real and personal property of the city; and

Whereas, Of said two per cent. one and one-eighths have been exhausted on the levies for park and general city purposes therefore

Be it Ordained by the Council of the City of New Orleans, That a special tax of one-eighth of one per cent. be, and the same is hereby assessed on the real and personal property, as valued in the assessment rolls of 1871, of this city, to be due and payable in 1872, like the other taxes of the city.

Adopted by the Council of the City of New Orleans, December 19th, 1871.

Yeas: Cockrem, Shaw, Delassize, Remick, Lewis, Walton, Bonzano.

BENJ. F. FLANDERS, *Mayor.*

A true copy:
H. CONQUEST CLARKE, *Secretary.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *November 23d,* 1891.

A true copy of Ordinance No. 1272, Administration Series,
133 adopted by the Council of the City of New Orleans, December 19th, 1871.

[SEAL.] E. L. BOWER,
Chief Clerk.

Ordinance 1913, *Levying a Tax for Current City Expenses for* 1873.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *December 17th,* 1872.

(No. 1913, Administration Series.)

An Ordinance Levying a Tax for Current City Expenses for the Year 1873.

Be it Ordained by the Council of the City of New Orleans, That in accordance with section fifteen of Act No. 73 of 1872, and with ordinance No. 1870, Administration series, adopted November 12th,

1872, entitled "An ordinance adopting an estimate of expenditures of the City of New Orleans for the year 1873," a tax for current city expenses for the year 1873 is hereby assessed and levied upon all the taxable property of and within the City of New Orleans, at the rate of one dollar and seven cents on the hundred dollars of valuation, according to the assessments for the said year, as directed by section fifteen of Act No. 73 of 1872, of the Legislature of the State of Louisiana.

Adopted by the Council of the City of New Orleans, December 10th, 1872.

Yeas: Walton, Brewster, Lewis, Turnbull, Fitzenreiter—5.

LOUIS A. WILTZ, *Mayor.*

A true copy:

H. CONQUEST CLARKE, *Secretary.*

MAYORALTY NEW ORLEANS,
CITY HALL, *April 22d*, 1893.

I certify the foregoing to be a true and correct copy of Ordinance No. 1913, Administration series adopted by the Council of the City of New Orleans, December 10th, 1872.

134 [SEAL.] (Signed) CLARK STEEN,
Secretary to the Mayor.

Ordinance No. 2596, A. S., Levying a Police Tax for the Year 1874.

Offered by the City of New Orleans and Filed February 10, 1892.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *May 13th*, 1874.

(No. 2596, Administration Series.)

An Ordinance Levying a Special Metropolitan Police Tax for the Year 1874.

Be it Ordained by the Council of the City of New Orleans, That, in conformity with Act No. 33, of the acts of the General Assembly of Louisiana, approved February 26th, 1874, and with Ordinance No. 2590, Administration Series, adopted May 5th, 1874, a special Metropolitan Police tax for 1874, at the rate of forty-four and one half cents on each one hundred dollars of the assessed valuation for said year on all real and personal property within the City of New Orleans, be and is hereby levied the same being required for the support and maintenance of the Metropolitan Police tax for 1874, at the rate of forty-four and one half cents on each one hundred dollars of the assessed valuation for said year of all real and personal property within the City of New Orleans, be and is hereby levied the same being required for the support and maintenance of the Metropolitan Police force in New Orleans, as appears by the estimate and apportionment made by the Board of Police Commissioners.

Adopted by the Council of the City of New Orleans, May 12th, 1874.

Yeas: Brewster, Calhoun, Fitzenreiter, Lewis, Schneider, Stureken, Turnbull.

LOUIS A. WILTZ, *Mayor.*

135 A true copy:

DANIEL SCULLY, *Secretary.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *December 31st*, 1888.

A true copy of Ordinance No. 2595, Administration Series, adopted by the Council of the City of New Orleans, May 12th, 1874.

[SEAL.] E. L. BOWER,
Chief Clerk and Custodian of City Ordinances.

Ordinance No. 2932, A. S., Levying Police Taxes for the Year 1873.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *January 13th*, 1875.

No. 2932, Levying City Taxes for the Year 1875.

Be it Ordained, That in conformity with the several acts of the Legislature relative thereto, and with Ordinance No. 2829, Administration Series, adopted December 29th, 1874, the following taxes be and are hereby levied and assessed for the year 1875, on all taxable property within the City of New Orleans, according to the assessment of said year, viz:

Police tax forty-nine and one half cents on each and every one hundred dollars of valuation.

Adopted by the Council of the City of New Orleans, January 12th, 1875, the veto of the Mayor to the contrary notwithstanding.

Yeas: Bertoli, Brown, Bonny, Burke, Landry, McCarthy, Pilsbury.

(Signed) J. N. HARDY, *Secretary.*

MAYORALTY OF NEW ORLEANS,
CITY HALL *December 31st*, 1888.

A true copy of Ordinance No. 2932, Administration Series, relative to levying a tax for the year 1876, adopted by the
136 Council of the City of New Orleans, January 25th, 1876.

[SEAL.] E. L. BOWER,
Chief Clerk and Custodian of City Ordinances.

Ordinance No. 3367, A. S., Levying a Police Tax for the Year 1876.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *January 26th*, 1876.

No. 3367, Administration Series.

An Ordinance Levying City Taxes for the Year 1876.

Be it ordained by the Council of the City of New Orleans, That, the following taxes be and are hereby levied and assessed for the year 1876, on all taxable property within the limits of the City of New Orleans, according to the assessment of said year, to-wit:

City debt tax—For redemption and payment of interest on bonded debt, twenty-six cents on every one hundred dollars of valuation.

Police tax—Forty-two cents on every one hundred dollars of valuation.

Current City expense tax—Fifty-seven cents on every one hundred dollars of valuation.

Total tax—One and one half per cent. on an assessment of $119,045,515.

Adopted by the Council of the City of New Orleans, January 25th, 1876, the veto of the Mayor to the contrary notwithstanding.

Yeas: Bertoli, Brown, Burke, Landry, Pilsbury—5.

Nays: Bouny—1.

J. H. HARDY, *Secretary.*

MAYORALTY OF NEW ORLEANS,
CITY HALL, *August 28th*, 1888.

137 A true copy of Ordinance No. 3367, Administration Series, adopted by the Council of the City of New Orleans, January 25th, 1876, approved by the Mayor and duly promulgated in the official journal.

[SEAL.]

E. L. BOWER,
Chief Clerk.

Petition of Mrs. Adele Beer, F. L. Fernandez, Mrs. J. DeJan, Isidore Newman, Sr., H. Abraham & Son, Henry and Jacob H. Abraham, and Hermann Nuegass to be Made Parties—Creditors.

Filed Feb. 12th, 1892.

U. S. Circuit Court, Eastern District of Louisiana. In Equity.

No. 11983.

HENRY W. BENJAMIN
versus
CITY OF NEW ORLEANS ET ALS.

To the Honorable the Judges of Said Court:

The petition of Mrs. Adele Beer, a *femme sole* F. L. Fernandez, Mrs. R. DeJan, *femme sole* Isidore Newman, Sr., H. Abraham & Son

and Henry and Jacob H. Abraham, the individual members of said firm, all citizens of Louisiana, and Hermann Neugass, a subject of Germany, respectfully shows:

That said Complainant's bill of complaint in this cause is brought in his own behalf, as well as in behalf of all creditors of the Board of Metropolitan Police, similarly situated, who are willing to come in and share the expenses of this suit; that your petitioners are creditors of said board by reason of their holdings of Metropolitan Police warrants, certificates and other claims, against it similar to those held by said complainant, their several holdings being as follows:

H. Abraham & Son in the sum	$10,000.00
Mrs. Adele Beer in the sum of	18,000.00
F. L. Fernandez in the sum of	11,000.00
138 Mrs. DeJan in the sum of	6,000.00
Isidore Newman, Sr. in the sum of	1,152.89
Hermann Neugass in the sum of	4,000.00

not including interest.

That said bill being for the final liquidation of said corporation—the Board of Metropolitan Police—and the marshaling and distribution of its assets among its creditors, and petitioners being such creditors and willing to share the expense of this suit thay adopt the allegations of *siad* complainant's bill, so far as pertinent to their claims, and af-irm the same to be true.

Wherefore, petitioners pray to be allowed to file this their petition and that they be admitted pa*r*ties to the cause, that they may come in under the decretal orders to be made therein, and establish their claims against said Board of Metropolitan Police, before a master in the cause or otherwise as the court may direct; that they and each of them may in the cause to the extent that they may be entitled thereto, and to participate according to their respective interests in any distribution of the assets of said Board of Metropolitan Police which may be made, and that their respective demands may be decreed to be paid out of said assets.

And they pray for all such other, further and general relief in the premises as the nature of the circumstances of the case and equity and good conscience may require and to your honore shall seem meet. And they will pray, etc.,

(Signed) ROUSE & GRANT,
Solicitors for Petitioners.

Order.

Let the foregoing petition be filed and let the petitioners be admitted as parties to the cause for the purpose stated in the petition.

(Signed) EDWARD C. BILLINGS, *Judge.*

February 12th, 1892.

139 *Opinion and Order of Reference to Master.*

Entered and Filed February 23d, 1892.

Circuit Court of the United States, Eastern District of Louisiana, at New Orleans.

No. 11983.

HENRY W. BENJAMIN
versus
CITY OF NEW ORLEANS.

Before Billings, *Judge*.

The court is of the opinion that the plea of prescription of the Parish of Jefferson is well founded, and, so far as that parish is concerned, the bill should be dismissed and that the defense of *res judicata* urged by the City of New Orleans be overruled, the court being of the opinion that the subject matter of the former (Harrison) suit was only for the amount of taxes collected, while that of this suit is the entire debt of the defendants created by the statute; but the court is further of the opinion that the amount paid under the decree in the former suit must be credited to the City of New Orleans upon the debt as fixed by the statute upon the capacity of a municipality to incur a debt operates the court is of the opinion that it cannot apply to this case where the Legislature gives the Board of Police Commissioners authority to determine the amount of the debt without any negative voice being left to the city.

So far as the other defendants are concerned the equities of the bill should be maintained and a reference ordered to A. G. Brice, Esq., master in the first place, to advertise in two daily newspapers published in New Orleans and notify all persons similarly situated with the complainant, i. e., having similar police warrants to make proof of them before the master within thirty days after an advertisement of three weeks; and that the master should upon
140 due notice to all parties, hear and report upon the following facts:

1st. The amount of such warrants and all other claims against the debt created by the statute viewed as a fund outstanding and the year in which they are issued or came into existence.

2d. The amount of debt due from each of the defendants by the apportionment of the Board of the Police Commissioners for each year of the existence and operation of said Board.

3d. The amount which each defendant has paid upon each year's debt.

4th. The amount of warrants and other claims held by the complainant and those who have joined with him in this cause and the year in which they were issued.

5th. The specific apportionment of the claims thus represented

among the defendants herein, including for this purpose also the Parish of Jefferson.

(Signed) EDWARD C. BILLINGS, *Judge.*

Feb. 23, 1892.

Master's Report.

Filed August 15, 1892.

United States Circuit Court, Eastern District of Louisiana.

No. 11983.

HENRY W. BENJAMIN
versus
THE CITY OF NEW ORLEANS ET AL.

Master's Report.

To the Honorable the Judges of the United States Circuit Court in and for the Fifth Circuit and Eastern District of Louisiana:

Pursuant to a decretal order of this Honorable Court, made and entered February 25th, 1892, I, the undersigned Master, gave notice by advertisement in two daily newspapers, published in the
141 City of New Orleans to all persons having similar warrants as held by the claimant, to make proof of the same after thirty days' advertisement; and that the Master should upon due notice to all parties, hear and report upon the following facts:

1. The amount of such warrants outstanding and the year in which they were issued or came into existence.

2. The amount of debt due from each of the defendants by the apportionment of the Board of Metropolitan Police Commissioners for each year of the existence and operation of said Board.

3. The amount which each defendant has paid upon each year's debt.

4. The amount of warrants and other claims held by the complainant, and those who have joined with him in this cause, and the year in which they were issued.

5. The specific apportionment of the claims this represented among the defendants herein including, for this purpose also, the Parish of Jefferson.

In pursuance of this decretal order, the notices as directed have been given in the public papers as will appear by the copies annexed and by special notice to the parties; a number of hearings have been fixed and continued from day to day, until Thursday, the 16th, June. On June 19th, 1892, complainant and defendant, by their counsel, filed briefs and statements of their case, and same was submitted.

A serious difficulty presents itself on the very threshold of this case. It seems to arise out of the system of bookkeeping, that is

peculiar, if not original as conducted by the Administrator of accounts, and the Administrator of Finance at the City Hall, during the years from 1869 to 1875, in so far as keeping the account with the Treasurer of the Board of Metropolitan Police.

142 The counsel for the complainant and the defendant both agree that the apportionments for the years beginning in 1868-69 and ending in 1876, for the Metropolitan Police force as against the City of New Orleans, was $6,033,030.00.

This was the sum total of the apportionments made by the commissioners of the Board of Metropolitan Police, chargeable against the City of New Orleans for the period above mentioned. The city is not liable for any sum beyond the amount of these apportionments; but it is claimed by counsel for defendant, that up to the 1st of January 1874, the City of New Orleans paid or redeemed warrants issued by the Board of Metropolitan Police to the amount of..... $4,798,506.00

Counsel for complainants claim that the books of the City Hall show that the defendants paid up to the 1st of January, 1874, only the sum of..... $4,032,664.12

Making a difference between the parties as to what the books of the Administrator of Finance and Comptroller do show of..... $765,841.88

From 1874 to 1876, it is claimed by the city, this amount is increased, until the difference between the complainants and defendant, as claimed from the books, is $949,643.91.

If defendant's statement is taken as true, it would appear the City of New Orleans has paid $476,284.00 in excess of the total aggregate apportionments made against it by the Commissioners of the Metropolitan Police Board from 1868 to 1876, inclusive.

In the course of the examination, the Master asked counsel for defendant if there was any charge made of the issue of fraudulent warrants issued in excess of the apportionments against the Commissioners of the Board of Metropolitan Police. He answered in the negative. The Master asked further if the City of New Or-

143 leans claims to have redeemed fra-dulent warrants, and the answer was in the negative.

One thing is very apparent, if no fraudulent warrants were issued in excess of the apportionments, then the City of New Orleans could not have -aid, or redeemed warrants issued by the Board of Metropolitan Police, in excess of the apportionments, if none bu- valid warrants were redeemed. It is equally apparent that if the large sum of $476,284.00 has been paid out for supposed warrants, or pretended claims in excess of the apportionments, some one is chargeable with gross malfeasance in office.

It is proved that they are valid warrants and claims outstanding against the City of New Orleans, made against this fund of..... $122,393.34

Which if added to the..... 476,284.00

Would increase the amount to..... 598,677.34

From the admission made by counsel for the city, as well as for the complainant, I shall assume that the difficulty arises not from any

dishonesty on the part of the Board of Metropolitan Police, or of the officials of the city government, but grows out of the peculiar method of book-keeping adopted by the officials of the city.

I realize the difficulty of the task before me, but I start with the conviction that an examination of the books kept by the city must show the precise amount the city has paid on the apportionments made against it by the Board of Metropolitan Police, and for what sum, if any, the city is still liable.

In pursuing the examination, I shall commence with the years 1868-69, in order to settle in the outset one important question raised by the defendant relative to its liability for failure to levy and collect the Metropolitan Police tax for the years 1868-69.

144 The fiscal year of the Board of Metropolitan Police began on the 1st day of October, 1868, and ended the 30th day of September, 1869, and the fiscal year of the Board continued thus until the 1st of January, 1874, when, by an act of the Legislature (Act No. 83 of 1874), it was made to correspond with the calendar year.

By the act No. 84 of 1868, entitled "an act to establish a Metropolitan District and provide for the government thereof"; the Boar- of Commissioners (section 28) were required to make a correct estimate and apportionment for each of the cities and parishes within the Metropolitan Police district; the Common Council of the cities of New Orleans, Jefferson and St. Bernard, were directed annually to order and cause to be raised and collected by taxation, according to law, within said cities and towns, the sums of money as aforesaid, annually, estimated and apportioned of the share of such cities or parishes of the said total expenses of the Metropolitan Police District. And the money thus raised (section 30) was to be paid into the State Treasury for the account of the Metropolitan Police District.

The apportionments for the years 18-8-69, to be paid by the City of New Orleans, was $877,595.00.

The evidence shows that for that year the expenses for the Metropolitan Police within the limits of the City of New Orleans was $818,477.72.

And for which sum, by the report of the Board of Metropolitan Police warrants were issued to the various officers of the police force. As above stated, no provision was made by the city to meet the payment of these warrants by assessment and collection of taxes.

At the end of that fiscal year 1869, the City of New Orleans, in order to settle with the Board of Metropolitan Police tendered to them seven per cent. bonds to the amount of $805,635.00.

145 These bonds were declined by the Board of Metropolitan Police on the ground that it was not authorized to receive anything but cash for the apportionment due by the city.

For a full account of the communications that passed between the Treasurer or Fiscal Agent, and the Board of Metropolitan Police, I refer to the annexed report of the Metropolitan Police Board for the year ending September 30th, 1870, pages 17 to 27 inclusive, and marked "R. 10,'" filed in evidence.

The City of New Orleans finally made arrangements with Thos. Layton, and these bonds were sold in New York at a discount, and the net amount realized by the Board of Metropolitan
Police was $614,198.61
Making a deficit of..... 204,288.11
Less than the actual expenses of the year ending September 30th 1869.

It is urged by the counsel for defendant that the City of New Orleans, should not be held responsible for the deficit, but should have a credit for the full amount of $805,635.00.

For a statement of the sale of these bonds and the amount realized, I refer to exhibit "Blotter B, No. 3."

The law it appears to me, is very clear and explicit. The City of New Orleans was directed to raise and collect "by tax upon the estates, real and personal, subject to taxation, according to law, within said City, —— the sum of money as aforesaid, annually estimated and apportioned as the share of such city, and that said treasurer shall receive the sums estimated and apportioned to said city, from or through the treasurer of said city, and give proper receipts therefor." (Sections 29 and 30, act 74 of 1868.)

In other words it was the duty of the City of New Orleans — levy
and collect taxes sufficient in money, and deliver said — to
146 the Fiscal Agent of the Board of Metropolitan Police. The
amount they paid to the Fiscal Agent of the Metropolitan Police was $614,189.61.

For this sum I think they are entitled to have credit, and not for the amount of the bonds.

The City of New Orleans having failed to make provision for the fiscal year of 1868-69, in accordance with the provisions of the law, left the Board of Metropolitan Police without funds for that year.

The warrants issued by the Board of Metropolitan Police to its officers and employees for this fiscal year 1868-69 were denominated "Blue Warrants."

No provision being made by the city to pay for the same, as stated above, from the evidence, it appears the members of the police were obliged to sell them to brokers at a ruinous discount.

To make good this loss, the Legislature, by act 72 of 1870, passed an act for the relief of the officers and members of the Metropolitan Police force, wherein it is recited: "The Metropolitan Police were "forced to receive warrants for their salaries instead of currency, "as required by law, thereby causing the police to lose the enormous "discount of thirty per cent. on the dollar, (Section 1) therefore "be it enacted by the Senate and House of Representatives of the "State of Louisiana in general assembly convened, that the Board "of Metropolitan Police, immediately after the passage of this act, "be and is hereby authorized to pay in warrants to each officer and "member of said police thirty per cent. on each warrant issued to "said officers and members of said police for the fiscal year of one "thousand eight hundred and sixty-nine, except those hereinafter "stated," etc.

By this act of the Legislature it appears that $203,600.65 in war-

rants were issued to the several officers and members of —
147 to make good this loss. This sum added to the first apportionment made the apportionment for the year ending September 30th, 1869, $1,081,195.65.

Thus far the facts are admitted, and for the apportionments of each succeeding year up to 1876, there is no dispute as to the amounts.

The real question of differences between the counsel for complainants and defendant is as to the sums due, if any, by the city; and this can only be solved by a careful examination of the books of the Administrator of Accounts and the Administrator of Finance. I shall endeavor to arrive at a correct solution of the rights of the parties, taking all the evidence, and the books of account of the departments of the comptroller and finance of the city as I find them, assuming that all the transactions of the Board of Metropolitan Police, and those of the City of New Orleans have been conducted with scrupulous honesty.

I shall begin with the case in the order as directed by the order of reference.

I am directed to find out as follows:

1. The amounts of such warrants and other claims against the debt created by the statute viewed, as a fund outstanding and the year in which they were issued, or came into existence.

For a detailed statement as to the number, the date of the issue, the name to whom issued for the time, and also to whom transferred, I refer to document marked "Newman X."

The Metropolitan Police warrants approved as against the city of New Orleans are as follows:

Metropolitan Police Warrants, 1868–69.

John Klein & Co., Central Depot...	$156.98	
John Klien & Co., New Orleans.....	120.07	
148		
John Klein & Co., Carrollton.....	1,569.72	
(This late item is a claim for police warrants against city of Carrollton for 1868–69, and as the City of New Orleans, by act of annexation, assumed all the liabilities of said city, this item is here added as a debt against the City of New Orleans for that year.)		
Isidore Newman, Sr., New Orleans..	165.63	
		$2,012.40

With legal interest from Oct. 1st, 1869.

Metropolitan Police Warrants, New Orleans, 1872.

John Klein & Co.	$83.33	
J. W. Fairfax	133.29	
With legal interest from Oct. 1, 1872.		
		$216.62

Metropolitan Police Warrants, New Orleans, 1873.

149	John Klein & Co.	$158.90	
	With legal interest from Oct. 1, 1873.		
			$158.90
	Amount brought forward		

Certificates, Metropolitan Police, 1874.

John Klein & Co.	$15,432.95	
Widow P. Dejan	6,605.28	
Hy. Abraham & Son	9,575.27	
Isidore Newman, Sr.	1,103.58	
Isidore Newman, Sr.	1,158.19	
Z. Bruenn	646.51	
M. Abascal	506.84	
H. Newgase	443.98	
H. W. Benjamin	5,052.40	
Jean Pomes	9.84	
Mrs. A. Beer	5,537.34	
Widow & children Sam'l P. Blanc	232.59	
Laroque Turgeau	664.10	
Samuel Brown	59.27	
F. A. Lee & Co.	1,738.52	
F. L. Fernandez	17.65	
Total certificates 1874		$49,184.31

All with legal interest from Jan. 1, 1875.

Pay Rolls, Metropolitan Police, 1874.

John Klein & Co.	676.39	
A. Cassard	20.00	
C. Louque	55.00	
F. L. Fernandez	1,070.36	
		1,821.75

150 All with interest from Jan. 1, 1875.

Claims Proved and Not Included in First Statement, 1874.

Represented by Rouse & Grant pay rolls	$3,175.07	(See Newman Y.)	
J. W. Fairfax pay rolls	119.77		
J. W. Fairfax certificates	530.17		
Amount brought forward			
Zerilla Myer pay rolls	1,795.65		
F. Johnson certificates	88.71		
J. Burkhardt certificates	250.67		
Gideon Townsend pay rolls	100.86		
John Klein & Co. pay rolls	215.43		
John Klein & Co., certificates	177.86		
H. Abraham & Son certificates	30.00		
I. Newman, Sr., certificates	233.96		
Hy. Bier certificates	100.00		
		$7,157.50	
			$58,163.56

All with legal interest from Jan. 1, 1875.

Certificates Metropolitan Police, 1875.

John Klein & Co.	$1,454.68		
Isidore Newman, Sr.	219.17		
Jean Pomes	63.58		
151 Mrs. A. Beer	11,232.27		
Widow and Children of Samuel P. Blanc	861.95		
Samuel Brown	118.90		
F. A. Lee & Co.	82.19		
		$14,032.74	

All with legal interest from Jan. 1, 1876.

Claims Proved and Not Included in First Statement, 1875.

H. Benton certificates	$118.70		
H. Swettenham certificates	134.55		
Gideon Townsend certificates	71.23		
Amount brought forward			
John Klein & Co. certificates	84.93		
John Klein & Co. orders	164.00		
Widow P. Dejan orders	194.36		
		$767.77	
			$14,800.51

All with legal interest from Jan. 1, 1876.

Certificates Metropolitan Police, 1876.

	John Klein & Co.	$1,512.91	
	Widow P. Dejan	171.15	
	Isidore Newman, Sr.	3,682.93	
	Z. Bruen	2,146.08	
	Jean Pomes	206.53	
	Mrs. A. Beer	516.34	
	Laroque Turgeaux	57.25	
152	F. A. Lee & Co.	59.00	
	F. L. Fernandez	1,670.56	
			9,794.55

All with interest from Jan. 1, 1877.

Pay Rolls, Metropolitan Police, 1876.

	John Klein & Co.	$5,280.87	
	Z. Bruenn	4,079.18	
	Louis Boisdore	967.32	
	Jean Pomes	3,528.08	
	A. Cassard	237.09	
	Samuel Brown	118.58	
	Charles Loque	794.89	
	F. A. Lee & Co.	2,549.27	
	F. L. Fernandez	9,924.63	
	Represented by Rouse & Grant	10,605.89	(detailed in Newman X.)
			$38,085.80

All with legal interest from Jan. 1, 1877.

Amount brought forward.....

Claims Proved and Not Included in First Statement, 1876.

	Mrs. J. Quilter, pay roll	$71.03	
	H. B. de L'Etang certificate	77.56	
	H. F. Swettenham certificate	57.25	
	L. Malone certificate	152.45	
	Thos. Hart certificate	22.50	
	Hy. Bier certificate	169.39	
153	J. W. Fairfax	180.54	
			730.72
			$48,611.07

All with legal interest from Jan. 1, 1877.

Recapitulation.

Metropolitan Police warrants 1868–69 proved since first statement with legal interest from Oct. 1, 1869		$2,012.40
Metropolitan Police warrants 1872, proved since first statement with legal interest from Oct. 1, 1872		216.62
Metropolitan Police warrants 1873 proved since first statement with legal interest from Oct. 1, 1873		158.90
Metropolitan Police certificates 1874 first statement	$49,184.31	
Metropolitan Police pay rolls 1874, first statement	[illegible]21.75	
Metropolitan Police certificates 1874 proved since first state-		
154 ment	1,750.72	
Metropolitan Police pay rolls 1874, proved since first statement.	5,406.78	
Total 1874		$58,163.56
All with legal interest from Jan. 1, 1875.		
First statement	14,032.74	
Metropolitan Police certificates 1875, proved since first statement	409.41	
Metropolitan Police orders proved since first statement	358.36	
Total		$14,800.51
All with legal interest from Jan. 1, 1876.		
Metropolitan Police certificates 1876, first statement	9,794.55	
Metropolitan Police pay rolls 1876, proved since first statement	38,085.80	
Metropolitan Police pay rolls 1876, proved since first state-		
155 ment	223.48	
Metropolitan Police certificates 1876, proved since first statement	326.70	
Metropolitan Police bill 1876, proved since first statement	180.54	
Total		$48,611.07
		$123,963.06
All with legal interest from Jan. 1, 1877.		

The amounts due to holders of Metropolitan Police warrants by other corporations than the City of New Orleans as far as proved before the master, are as follows:

Claims of the Metropolitan Police proved against the Parish of St. Bernard, are as follows, to wit:

H. W. Benjamin, 1869	$640.83	
Jean Pomes, 1876	93.14	
A. Cassard, 1876	765.44	
A. Cassard, 1875	211.14	
John Klein & Co., 1875	325.32	
John Klein & Co., 1876	207.84	
Jos. Fernandez	362.51	
		$2,606.22

(See document marked "Hernandez.")

All with legal interest from the end of the year in which the debt accrued.

Parish of Jefferson (right bank):

156	John Klein & Co., 1874	$353.05	
	John Klein & Co., 1875	167.11	
	H. W. Benjamin, 1876	84.69	
	F. A. Lee & Co., 1874	55.37	
	M. Bijou, 1875	305.64	
	H. Benton, 1874	73.22	
	C. Dickman, 1874	421.90	
	C. Dickman, 1875	290.40	
	J. W. Fairfax, 1874	37.59	
	J. W. Fairfax, 1876	71.03	
			1,860.00

All with legal interest from the end of the year in which the debt accrued.

Parish of Jefferson (left bank):

J. W. Fairfax, 1875	$101.43	
Hy. Tebbe, 1874	79.45	
Hy. Tebbe, 1875	76.71	
		257.59

All with legal interest from the end of the year in which the debt accrued.

City of Kenner:

John Klein & Co, 1875	$49.50	
C. Dickman, 1874	488.67	
C. Dickman, 1875	331.12	
J. W. Fairfax, 1875	84.93	
Z. Myers, 1875	100.00	
		1,054.22

All with legal interest from the end of the year in which the debt accrued.

157 (See statement annexed to document marked "Newman Y."

The apportionments for the several years as appears from the reports of the table taken from the Metropolitan Police Department, and which amounts are admitted to be correct by counsel for complainant and defendants as against the city of New Orleans, are as follows:

Apportionment for year 1868–69.....	$877,595.00	
The next re-apportionment under act 72 of 1870.....	203,600.65	
Apportionment for year 1869–70.....	838,294.97	
Apportionment for year 1870–71.....	809,932.59	
Apportionment for year 1871–72.....	724,460.90	
Apportionment for year 1872–73.....	718,017.00	
Apportionment for months October, November and December of 1873.....	182,886.53	
		$4,354,787.64
Apportionment for year 1874.....	$587,723.12	
Apportionment for year 1875.....	590,528.59	
Apportionment for year 1876.....	499,991.16	
		1,678,242.87
Total assessment for the Board of Metropolitan Police as against the City of New Orleans for the whole term.....		$6,033,030.51

In making up the account of the credits in favor of the city for the several years, it will be seen that I have not relied upon document marked "Steen D. 6," referred to and relied upon by attorney for defendant. It is due to Mr. Steen to state that, when he made the account filed and marked "Steen D. 6," he did not have
158 the books and documents kept by the Administrator of Finance, marked respectfully "R. 4," "R. 5," "R. 6," "R. 7," and "R. 8," as well as some other important account books in the comptroller's office. Mr. Steen was the accounted — by the city to assist the Master in obtaining correct statements from the books; examination of this additional evidence made it apparent to him that several of the items in the account of "Steen D. 6," had to be modified so as to comport with this additional evidence.

For this reason, document marked "Steen D. 6." has not been given that weight, it otherwise might have had in the case.

I conclude, also, that the attorney for the city has modified his own views upon the subject since filing his first brief in this case. In a supplemantal brief filed July 28th, 1892, he states.

"The credit of $663,547.00 appears on "Steen D. 6," under heading Metropolitan Police warrants 1872, it is now ascertained to "embrace the collection of Metropolitan Police tax for 1871, $141,459, and also the collection of the extra tax of 1872, $544,716.34, "Steen D. 6," pages 3 and 4, and it is credited against "The appointment of 1871–72.

"The credit of $88,228.00 (see "Steen D. 6," page 5), it now seems "is not additional, but is included in $643,765 credit for the Metro-

"politan Police warrants for 1873, thus modified the credit against "the apportionments for 1868–69."

Mr. Steen has modified his statement, as contained in document marked "Steen D. 6," by a more complete examination of all the records since brought to his notice.

City of New Orleans, Dr.

1868–69:

			Dr.
To apportionment of Metropolitan Police as made by the Board for year ending September 30th,			
159 1869, see record marked "R. A."			$877,595.00
(Warrants issued for above year are denominated "Blue Warrants.")			

NOTE.—Under act 72 of 1870, an additional apportionment of 30 per cent. was levied for years 1868–69, see record "R. A." It will be seen by reference to record "R. B." Annual report of the Board of Metropolitan Police for year ending September 30th, 1871, fos. 26, 28, that the sums of $176,860.06 and $25,997.45 respectively were added to the apportionments for the year 1869–70 and 1870–71 was $203,600.25.

1869–70:

To apportionment of Metropolitan Police as made by the Board for 1869–1870, see document "R. A."	$838,294.97	
Add apportionment under act 72 of 1870, both stated in note, see page 26, record marked "R. A"	176,860.06	
Total of blue warrants issued for said year		1,015,155.03
Amount carried forward		$1,892,750.03

160 In Account with the Board of Metropolitan Police, Cr.

1868–69:

By proceeds of sale of $805,000 seven per cent. bonds issue of 1869 as stated in the above record, see record "R. B." Cash		$614,189.61
Warrants deposited with the State Treasurer, see Deposit Book "R. 1," Treasurer's Book "R. 8"	$109,381.45	
Warrants deposited, Books "R. 1" and "R. 8"	11,461.01	
Warrants deposited, Books "R. 1," and "R. 8"	9,221.17	
		130,063.63

By war-ants handed over to Treasurer Metropolitan Police Board as per receipts to Administrator of Finance, see record "R. 4"	$83,680,71⅔	
By records handed over as above, see record "R. 5"	1,648.16	
		$85,328.87
Warrants 18-19ths of converted into 7.30 certificates, by the city of New Orleans, and returned to holders, see register of Adm'r of Acc'ts, marked "R. 7." Contingent		21,618.02
		851,200.13
1869–70:		
161 By cash and warrents deposited with State Treasurer, see deposit book "R. 1," State Treasurer's book marked "R. 8"	929,918.62	
By warrants handed over to the Treasurer Board of Metropolitan Police as per receipts to Adm'r of Finance, see record "R. 4"	30,963.03	
		960,881.65
Amount carried forward		1,812,081.78
Amount brought forward		1,892.750.03
1870–71:		
To apportionment for Metropolitan Police as made by the Board for the year 1870–71 see record "R. A." (warrants)	809,932.59	
Add apportionment under act 72 of 1870, see folio 28, record "B"	25,997.45	
		835,930.04
Amount carried forward		2,728,680.07
162 Amount brought forward		1,812,081.78
1870–71:		
By cash and warrants deposited with the State Treasurer, see deposit book marked "R. 1," State Treasurer's book marked "R. 8"	427.719.16	

By warrants handed over to Treasurer Board Metropolitan Police, as per receipts to Adm'r of Finance, see record marked "R. 4".....	$64,570.05		
By warrants handed over to treasurer, etc., as per receipts, etc., see record marked "R. 4." warrants or orders for certificates.....	231,055.22		
Warrants or orders for certificates, see record marked "R. 5".....	102,221.78		
		$397,847.05	
By warrants turned over to the Treasurer Board of Metropolitan Police, see record marked "R. 6." warrants			
163 received by Adm'r of Finance subsequent to January 1, 1874.....		300.00	
			$825,866.21
Amount carried forward.....			2,637,947.99
Amount brought forward.....			$2,637,947.99
1871–72:			
By cash and warrants deposited with the State Treasurer, see deposit book marked "R. 2." and State Treasurer's book "R. 8".....		$148,244.32	
By warrants handed over to Treasurer Board of Metropolitan Police as per receipts to Administrator of Finance, see record marked "R. 4".....	$297,880.75		
Warrants handed over to Treasurer, etc., see record marked "R. 5".....	264,995.91		
		562,876.66	
By warrants turned over to Treasurer Board of Metropolitan Police, being warrants received by Adminis-			
164 trator of Finance, subsequent to Jan. 1874, see record marked "R. 6".....		6,745.22	
By warrants now in hands of the Treasurer City of New Orleans.....		4,288.44	
			722,154.64
Amount carried forward.....			$3,360,102.63

Amount brought forward			$3,453,140.97
1872–73:			
To apportionment of the Metropolitan Police as made by the Board for the year 1872–73, see record marked "R. A."		$718,017.00	
Additional apportionment under act 33 of 1874 for the months October, November and December		182,886.53	
			900,903.53
Amount carried forward			$4,354,044.50
165 Amount brought forward			$4,354,044.50
To balance of apportionment under act 73 of 1870, not prorated			743.14
1874:			
To apportionment			587,723.12
1875:			
To apportionment			59,538.59
Amount carried forward			$5,533,039.35
Amount brought forward			$4,277,631.99
By difference in amount in warrants, as charged by Treasurer State of Louisiana, viz: See Treasurer's Book "R," page 54, entry	$74,469.52		
See deposit book "R. 3," page entry	72,158.15		
			2,311.37
1874:			
By certificates 1874 received for taxes		$43,555.57	
By cash paid Oglesby, fiscal agent		438,176.14	
By cash paid Murdock, treasurer		48,600.79	
By cash paid Harrison, receiver	2,849.27		
166			
By cash paid Harrison, receiver, under judgment of Supreme Court of Louisiana, 40 Ann., p. 509	5,704.54		
		8,553.81	
			538,886.31

1875:

By certificates 1875 received for taxes, etc		$38,136.75	
By cash paid Murdock, treasurer	$414,975.81		
By cash paid Murdock, treasurer	68,925.87		
		483,901.68	
By cash paid Harrison, receiver	8,032.42		
By cash paid Harrison, receiver, under judgment of Supreme Court of Louisiana, 40 Ann., page 509	12,186.95		
		20,219.37	
			$542,257.80
Amount carried forward			$5,361,087.47
Amount brought forward			$5,533,039.35

1876:

To apportionment	499,991.16
	6,033,030.51

167

To apportionment of the City of Carrollton up to Sept. 30, 1873		$59,037.70	
Amount to the credit of up to same date		44,052.16	
Balance due by the City of Carrollton assumed by the City of New Orleans under act of annexation			14,985.54
Amount brought forward			$5,361,087.47

1876:

By certificates 1876 received for taxes, etc		$7,601.49	
By cash paid Murdock, treasurer		377,135.03	
By cash paid Harrison, receiver	$48,022.97		
By cash paid Harrison, receiver, under judgment of Supreme Court of Louisiana, 40 Ann., p. 509	12,752.55		
		60,775.52	
			445,512.04

By cash paid Harrison, receiver, under judgment, 40 Ann., p. 509, not pro rated in 1874, 1875 and 1876...		$300.00
To balance due.....		226,131.00
168 Total		$6,033,030.51
By balance due by City of New Orleans to the Metropolitan Police fund.	$226,131.00	
Balance due by City of Carrollton to the Metropolitan Police fund assumed by the City of New Orleans.....	14,985.	
Total amount due by the City of New Orleans..		$241,106.54

In arriving at these figures I have given the books received from the officers of the comptroller and the administrator of finance many days of careful examination, assisted by very competent accountants, one appointed by the attorney for the complainants and the other by the attorney for the defendant.

From the books of account I find the City of New Orleans up to 1874 received Metropolitan Police warrants for all taxes, licenses, levee dues, etc. During those years the city turned over to the State Treasurer only so much in amount of those warrants as would make up the amount of taxes due to the Metropolitan Police account, keeping all the rest of the warrants on hand. Warrants taken in any one day were not the warrants that appeared at all times to be turned over to the treasurer of the board; but as they had a surplus of warrants on hand in the treasurer's office they would take from the
169 package of warrants on hand a sufficient amount, without regard to any particular warrants, and sometimes without regard to the years in which the warrants are issued. Such amount would be turned over to the Treasurer of the Board of Metropolitan Police as Metropolitan tax (see "R. 1," "R. 2" and "R. 3"). Thus in the beginning of 1874, there was a large amount of war-ants on hand at the City Hall. During the year 1874 under an ordinance (No. 2694, administration series) the city, however, was authorized and required to turn over all the warrants on hand. The treasurer began to turn over thede warrants, see records marked "R. 4" and "R. 5," a list was kept of the number of warrants, the amount of the warrants and the years for which they were issued: See records marked "1," "2," "3," "4" and "5," which show all the warrants the City of New Orleans received for taxes, or otherwise, during the whole period of existence of the Metropolitan Police, except the sum of $21,618.02, being eighteen-nineteenths (18-19) of warrants of Metropolitan Police converted into 730 certificates by the City of New Orleans. These warrants, credited with 18-19ths of their face, as the evidence shows, of the city's proportion were then returned to the holder; in addition to a further sum of $29,237.23 in warrants, now in the hands of the treasury of the City of New Orleans, as certified by A. P. Harrison, chief clerk, treasurer's Office. See document marked "Harrison I."

The amounts of the warrants as found thus received by the city

and turned over to the Board of Metropolitan Police, conforms to the accounts kept in the books now in the possession of the comptroller and those in possession of the City Treasurer and as here declared in this report.

The account of these books show there are still due and unpaid to account of Metropolitan Police funds the sum of $226,131.00.

170 In all questions of doubt, I have, as a rule, given the city the benefit. As to the other defendant corporation, the City of Carrollton, has already been added to the City of New Orleans, and, therefore, its liability is merged into that of the city.

No evidence has been adduced before me going to show the full amount the Parish of Jefferson (right bank and left bank) the Parish of St. Bernard and the City of Kenner have paid, or the full amount which these defendants yet owe. I report the amount now claimed to be due as shown by the evidence.

It is admitted, as will be seen by document marked "St. Bernard," that the records of the Parish of St. Bernard were destroyed by fire in the year 1883, so that the original books, documents, etc., going to show the original notices sent by the Board of Metropolitan Police to this parish as to the amount of its assessment, as well as the books showing the amount of taxes collected for the Metropolitan Police fund, but I am not warranted, from the evidence produced, to fix it with any certainty.

As to the corporations of the Parish of Jefferson, I may also add that, while it appears that each of said corporations still owe a considerable balance to the Metropolitan Police fund, there has been no evidence to fix the amount with any accuracy.

4. The amount of war-ants and other claims held by complainant and those who have joined with him in this cause and the year in which they were issued.

The amount due by the City of Carrollton up to Sept. 30, 1873, was		$59,037.70
171 But there appears to have been issued in warrants, sued in warrants according to the report dated Sept. 30, 1873, only	$51,860.53	
And according to that report there was outstanding against the City of Carrollton warrants to the amount of	9,169.55	
Up to the 1st of January the City of Carrollton had redeemed and should have credit for		44,052.16
Leaving a debt against the City of Carrollton up to that day of		$14,985.54

What portion of this liability has been paid I have no means of ascertaining. (See exhibit "B. 2.")

Although the City of Carrollton was consolidated with the City of New Orleans by act 71, of 1874, the report of the chief clerk states that the account with the City of Carrollton was carried up in book

of the Metropolitan Police Board to Dec. 31st, 1874. The accounts against the City of Carrollton up to that date were reported separately for greater accuracy.

172 1868-69:

Apportionment for Parish of Jefferson (right bank)	$12,850.00	
1869-70	9,992.73	
1870-71	7,330.39	
1871-72	6,847.70	
1872-73	6,883.75	
Apportionment under act 72 of 1870	653.00	
1874	5,275.28	
		$49,932.85

1869-70:

Apportionment for Parish of Jefferson (left bank)	$7,884.10	
1870-71	2,944.16	
1871-72	2,839.48	
1872-73	2,799.50	
1874	1,355.32	
		$17,822.56

From the reports found on page 12 of the Metropolitan Police Jan. 27, 1875, it will appear the following amounts were due and unpaid, to-wit:

Parish of Jefferson (right bank)	$11,236.96	
Parish of Jefferson (left bank)	5,520.77	
Parish of St. Bernard	39,535.41	
City of Kenner for year 1874	1,321.59	
		$58,613.73

The report adds "not one of these corporations has turned over the first dollar toward the expenses of the year 1874."

There is no evidence before me going to show that any of them have paid anything since, nor am I able, from the evidence to ascertain for what amount, beyond these sums, these corporations are liable; I therefore can make no report of the sum, which each defendant has paid, beyond the above statement.

"It is claimed for the city that the Metropolitan Police
173 "warrant account of $184,324.00, though issued for the ex-
"penses of 1873; should be credited against the apportion-
"ments of the years in which they were received. Whether the Master
"adopts this view or that they should be charged against the year
"1873, he is asked to find that these warrants were received in the
"year*w* as follows, to-wit:

"None in 1873; $85,202 in 1874; $25,245 in 1875; and $73,876
"in 1876. These facts stated will enable the city to raise the ques-
"tion of law as to the imputation of the warrants."

The figures in above statement of counsel for the city are taken from the supplem*a*ntal brief of counc*i*l as filed July 29th, 1892.

In a rough statement as exhibited to the Master in June there is an item of $184,324.05, but in the account as above set forth, (see page — of this report) and which I believe is correct, I find the item alluded to is part of the item of $190,698.32, and practically the statement, as claimed by counsel for defendant, is correct, that such amounts as stated in his brief were received for taxes for the years specified; but I have arrived at the conclusion that it makes no difference as to the city's liability, whether they were applied for the taxes of 1873, or other years, the total amount of warrants are now due without reference to any particular year, by reason of the indiscriminate manner in which these warrants were received to settle taxes for any years for which they were presented.

I have thus stated the two points, I think, as requested by counsel for defendant; the first was the outstanding warrants of each of the years, as required, and also, how the item in the account of
174 $184,324 was liquidated by the city.

On the claims as stated in this report, I have allowed interest at the rate of five per centum from the end of the Metropolitan Police fiscal year in which the warrants or certificates were issued.

Under the rules laid down in the Civil Code it would be perhaps strictly within law had I found interest from the day each one of these warrants or certificates were made payable. Taking into consideration, however, the delays incident to the collection of taxes during the month of the year, I have thought it more equitable to make the claim bear interest from the end of the fiscal year in which the warrants or certificates were issued.

The Civil Code, article 1938, says: "All debts shall bear interest "at the rate of five per centum per annum from the time they be- "come due unless otherwise stipulated."

On the face of the warrants and certificates filed in this case, there is not stipulation that I have seen on any of them waiving interest, and as certainly the warrants were due at the end of the fiscal year, I have, in all cases, stated "with interest at the rate of five per cent. per annum from the 1st of October of the year following, where that was the beginning of the fiscal year, and from the 1st of January of the year following, after the year 1874."

I do not refer to authorities relative to interest, because the law is well settled and the article is exceedingly plain, and the jurisprudence, which has been uniform, can make it clearer or more forcible.

C. C. article 1,940 reads:

"In cases where no conventional interest is stipulated, the legal "interest at the time the contract was made, should be recovered,
"although the rate may have been subsequently changed
175 "by law."

I therefore find that there is due by the City of New Orleans to the Board of Metropolitan Police, or to the holders of warrants and certificates now outstanding and issued by said board for the years;

1868–69	$ 2,012.40	
With legal interest at 5 per cent. from Oct. 1, 1869.		
1872	216.62	
With legal interest at 5 per cent. from Oct. 1, 1872.		
1873	158.90	
With legal interest at 5 per cent. from Oct. 1, 1873.		
1874	58,163.56	
With legal interest at 5 per cent. from Jan. 1, 1875.		
1875	14,800.51	
With legal interest at 5 per cent. from Jan. 1, 1876.		
1876	48,611.07	
With legal interest at 5 per cent. from Jan. 1, 1877.		
Making a total of		$123,963.06

With interest as above stated.

In finding this amount due by the city to the holders of warrants and certificates issued in the years above stated, I repeat, I do not think such warrants or certificates should be held as claims to be paid out of the funds for a particular year in which they were issued, as claimed by counsel for the city; for the evidence discloses the fact that warrants and certificates had been taken in by the City
176 of New Orleans and indiscriminately applied to the payment of taxes for any year without reference to the date in which the warrants or certificates were issued. Thus, the fund for one year might be exhausted by warrants that were issued for other years, and it would be an injustice to war-ant-holders of those years where the fund was exhausted to be barred from recovery by the conduct of the city in applying, say, warrants issued for the apportionment of 1873 to pay the taxes of 1875 and 1876, thus, perhaps, exhausting the apportionment of 1873 by receiving warrants of 1874, 1875 or 1876, while a large number of the warrants for the years 1874, 1875 or 1876, or even preceding years, would be left unpaid.

I, therefore, think that the City of New Orleans is liable for these amounts still outstanding, due and unpaid without any reference to the years in which said warrants or certificates were issued.

This point was settled in the Judah Hart cases by this court and I assume that the ruling will be adhered to.

It may be further stated that the total amount of warrants for each year issued within the apportionment by the Metropolitan Police for the city's portion is a liability against the city, and whether she applies the warrants that were issued or diminish her liability for the amount thus due for other years.

The adoption of such a rule as asked by the defendant would work a grave injustice to warrant-holders of other years.

Wherefore the master finds that there is due by the City of New Orleans to the funds of the Board of Metropolitan Police the sum of..... $241,106.54

The amount established by the evidence to be due to the warrant-holders in this suit issued against
177 the apportionments due by the Cities of New Orleans and Carrollton aggregates the sum of.. 123,963.06

With interest at the rate of five per centum (5) per annum, as stated in the report.

All of which is respectfully submitted.

(Signed) A. G. BRICE, *Master.*

August 8, 1892.

Testimony of Jno. L. Newman, Recalled.

Extract from Testimony Taken Before A. G. Brice, Master.

Mr. JOHN L. NEWMAN recalled.

Examined on the part of the City of New Orleans by Mr. MILLER:

Q. Mr. Newman, have you made an examination of Police warrants account of Police warrants of '74 in Ledger of 1874, Administrator of Finance, folios 147-14?

A. I have, sir.

Q. Ledger 72 to 77, folio- 137 to 139?

A. I have sir.

Q. That embraces the whole account?

A. Yes, sir.

Q. Now, will you please state from your examination, what amount of the Metropolitan Police warrants referred to in that account were received in the year 1874; what amount were received in the year 1875, and what amount were received in the year 1876?

A. In 1874 there was received $85,202.01; in 1875 $25,245.48; in 1876 $73,876.56, making a total of $184,324.05.

Admission as to Citizenship.

Extract from Testimony of Jno. L. Newman Before A. G. Brice, Master.

178 It is admitted by Mr. Rouse for complainant, that John Kline & Co., Widow P. Dejean, Henry Abraham & Son, Isidore Newman, Sr., F. L. Fernandez and Mrs. A. Beer are citizens of the United States and of the State of La., and that H. Neugass and W. H. Benjamin are aliens. He also offers the report of the Board of the Metropolitan Police to the Governor of Louisiana for the year ending September 30th, 1870; also report of same Board to the Governor of Louisiana for year ending September 30th, 1871.

To the Honorable the Judge of the United States Circuit Court in and for the Fifth Circuit and Eastern District of Louisiana:

Pursuant to a decretal order of this Honorable Court dated December 19th, 1892, referring back to the Master, the report in the above case filed August — 1892, the undersigned Master reports that he has taken up the matter of said reference, as to the virile portions of the apportionment made by the commissioners of the Board of Metropolitan Police upon all the political corporations charged with the support of the Police within the Metropolitan Police District, and the several years when these warrants of the complainants originated; and, those years and the virile portion of the City of New Orleans and the other political corporations.

It is proper for the Master to state in the outset that for the years 1875 and 1876 there is no epidence in the record going to show the apportionments to be paid by the parishes of Jefferson, Saint Bernard, and the City of Kenner. So far as record goes to shew that all the records of that parish were destroyed by fire.
179 A careful examination has failed to discover any evidence of the apportionments to be paid by the above named corporations for these years.

By and with the consent, however, of the counsel for plaintiffs and defendant, as will appear by the annexed document of agreement, the Master has been authorized, in order to arrive at the apportionments to be paid by the Parishes of Jefferson and St. Bernard, and the City of Kenner, to assume that the apportionments for 1875 and 1876 made against *the* Bernard, are in the same proportion to the apportionment as they bore in the year 1874.

In accordance with said agreement, the Master has assumed what the apportionments would be against the said Parishes and City of Kenner of 1875 and 1876 upon that basis. For the preceding years, the evidence shows the amounts respectively to be paid by all the corporations, and therefore the figures are made from the apportionments themselves.

I submit herewith a statement showing the shares of each corporation in the Metropolitan Police District of the debts due by the Board of Metropolitan Police computed in the proportion, which their apportionments bore to the total apportionment made to said corporation by said board.

Year.	Corporation.	Apport'm't.	Total.
1868–9	New Orleans including Carrollton	$1,100,773.00	
	Jefferson R. & L. Bk	13,503.00	
	St. Bernard	21,444.27	
			$1,135,020.27
1872	New Orleans including Carrollton	$733,347.08	
	Jefferson R. & L. Bk	9,687.18	
	St. Bernard	7,198.70	
			$750,232.96
1873	New Orleans including Carrollton	$726,885.25	
	Jefferson R. & L. Bk	9,633.25	
	St. Bernard	6,349.00	
			$742,867.50
1874	New Orleans	$587,723.12	
	Jefferson R. & L. Bk	6,630.60	
	Kenner	1,355.32	
	St. Bernard	4,290.96	
			$600,000.00
1875	New Orleans	$590,528.59	
	Jefferson	6,661.64	
	Kenner	1,362.47	
	St. Bernard	4,310.47	
			$602,863.17
1876	New Orleans	$499,991.16	
	Jefferson	5,640.30	
	Kenner	1,153.58	
	St. Bernard	3,649.58	
			$510,434.62

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Debts proved.	Percentage due by each.	Due by each corporation.	Total.
	.96922	$1,950.46	
	.01190	23.95	
	.01888	37.99	
$2,012.40			$2,012.40
	.07749	$211.74	
	.01291	2.80	
	.00960	2.08	
$216.62			$216.62
	.97849	$155.49	
	.01297	2.06	
	.00854	1.35	
$158.90			$158.90
	.97954	$58,500.39	
	.01105	659.93	
	.00226	134.97	
	.00715	427.01	
$59,722.30			$59,722.30
	.97954	$16,450.70	
	.01105	185.58	
	.00226	37.95	
	.00715	120.08	
$16,794.31			$16,794.31
	.97954	$49,168.72	
	.01105	554.66	
	.00226	113.44	
	.00715	358.90	
$50,195.72			$50,195.72

All of which is respectfully submitted.
(Signed) A. G. BRICE,
Master.

January 10th, 1893,
(Filed January 10, 1893.)

182 *Exception of the City of New Orleans to Master's Report.*

Filed Before Master Jan. 10, 1893, and Returned with His Report and Filed Jan. 10, 1893.

United States Circuit Court.

No. 11983.

HENRY W. BENJAMIN
versus
THE CITY OF NEW ORLEANS.

Exception of the City of New Orleans to the Master's Report.

The Master has doubtless adopted the best, if not the only method of arriving approximately at the proportions required to be stated under the last reference of the Court; but this defendant except to the report in all respects in so far as it asserts or charges the City of New Orleans with any liability whatever, and renews and adopts as far and to the full extent of their applicability the exceptions of the City of New Orleans to the previous Master's Report herein, already made before the Master, and again made on the filing of the previous Master's Report in this case.

(Signed) HENRY C. MILLER,
Solicitor for Defendant.

Exceptions received, considered and overruled.

(Signed) A. G. BRICE, *Master.*

January 9, 1893.

Defendant's Note of Evidence.

Filed Jan. 23d, 1893.

United States Circuit Court.

No. 11983.

HENRY W. BENJAMIN
versus
THE CITY OF NEW ORLEANS.

Note of Evidence for Defendant of the Testimony Taken Before the Master Offered on Final Hearing in Addition to that Pre-
183 viously Offered.

The testimony of A. P. Harrison, the testimony of James Campbell, the testimony of John L. Newman (4 examinations), the testimony of Frank Wheaton, the testimony of Clark Steen; together

with the statements and exhibits referred to by them, and the documentary evidence in the record—all offered by defendant.

The Metropolitan Police pay rolls, specially of October, 1874, November 1874, December, 1874 and December, 1876.

In connection with John L. Newman's testimony, the statements marked Newman X and New Y, part of the documentary evidence offered.

The Master's first and second reports. The orders of reference to him, together with the exceptions filed to the reports.

The admissions before the Master.

The Metropolitan Police warrants and Metropolitan Police certificates marked ——, introduced to show the form of all warrants and certificates. The affidavit of A. P. Harrison to the form of the warrants and certificates.

The record of Daunoy *vs.* The City of New Orleans, No. — of the Supreme Court.

Record in the Case of R. F. Harrison, Receiver, vs. City of New Orleans, No. 11899, *Circuit Court of the U. S. for the Eastern District of Louisiana.*

184 *Petition.*

Filed April 3, 1890.

United States Circuit Court, Eastern District of Louisiana.

No. 11899.

P. F. Harrison, Receiver,
vs.
City of New Orleans.

To the Honorable the Circuit Court of the United States for the Eastern District of Louisiana:

The petition of R. F. Harrison, a citizen of the State of Mississippi, herein acting as receiver of the Board of Metropolitan Police, duly appointed and qualified by the late Third District Court for the Parish of Orleans, and now the Civil District Court for said Parish, respectfully represents:

That by virtue of the acts of the Legislature creating the late Board of Metropolitan Police, and the amendments thereto, referred to in the memorandum or exhibit hereto annexed was made the duty of the City of New Orleans, a corporation duly created by the laws of Louisiana, and whose charter was renewed in 1882 with all the rights and obligations imposed by the previous laws above mentioned, to levy and collect a special tax for the support of the officers and members of said Board of Metropolitan Police in accordance with the apportionment fixed by said Board.

That the said City of New Orleans, budgeted in its regular budget for 1874, 1875 and 1876, the sums apportioned and levied a special police tax for said years as follows:

1874	$582,564.43
1875	590,528.59
1876	499,991.16

185 That said City of New Orleans proceeded to collect said tax and to pay over the same to the treasurer of the Board of Metropolitan Police, as soon as collected.

That a portion of said collection was also paid over to the Fiscal Agent and to your petitioner as receiver;

That your petitioner sued the City of New Orleans for moneys had and received and actually recovered judgment and collected thereunder the sum of $30,944.94/100.

That making due allowances for cancellation of erroneous assessments and all amounts paid, there is yet due by the City of New Orleans, for the taxes yet to be received, the following amounts:

For 1874	$43694.14
1875	50875.87
1876	54432.42
Making a total of	$149002.43
Deducting jud't Sup'e C't	30944.94
	118057.49

Leaves as yet due, the sum of one hundred and eighteen thousand and fifty seven 49/100 dollars.

That said taxes are still due and owing to the City of New Orleans, and are not prescribed.

That the Board of Metropolitan Police represented by your petitioner, is still indebted to the officers and members composing said board and their heirs and assigns, who hold the valid obligations of said board or their recognition on their rolls the full sum herein claimed.

That said sum is due for services actually performed, to preserve the property and life of the citizens of said city and preserve good order.

186 Wherefore, petitioner prays that the City of New Orleans be cited hereto and after due proceedings that she be condemned to pay petitioner the sum of one hundred and eighteen thousand and fifty seven 49/100 dollars, out of the special police tax levied during the years 1874-1875 and 1876, with such interest as said tax carried and costs; and petitioner prays for general relief.

(Signed) CHARLES LOUQUE, *Att'y.*

Acts of the Legislature referred to above:

1868, 90-91, 1869-42; 1869, 97, 98; 1870 E. S. 213-102; 1873, 120; 1874, 69; 1875, 35.

Answer.

Filed April 16th, 1900.

No. 11899.

R. F. HARRISON, Receiver,
vs.
THE CITY OF NEW ORLEANS.

Now comes the City of New Orleans, the defendant herein, and peremptorily excepts to plaintiff's demand, and for cause of exception shows:

That the city levied taxes for the years 1874, 1875 and 1876, for the support of the Metropolitan Police, in accordance with the act No. 74 of 1868; that the Metropolitan Police Board organized to receive from the city said taxes, was abolished in 1877 and thereafter R. F. Harrison, Receiver, was appointed receiver, to receive all said Metropolitan Taxes, for which the city was liable; and respondent further shows, that in the suit of R. F. Harrison, receiver, *vs.* The City of New Orleans instituted in the Civil District Court for the Parish of Orleans, brought to recover taxes for the
187 support of the Metropolitan Police, alleged to have been collected by the city, there was a final judgment of the Supreme Court of the State fixing and adjudging that the liability of said city for said taxes collected was thirty thousand nine hundred and ninety-four dollars and ninety four cents, which judgment was rendered by the Supreme Court on the 6th of May, 1888.

Your respondent further shows that subsequently, the said R. F. Harrison in his said capacity as receiver, brought suit against the City of New Orleans in the United States Circuit Court for the Fifth Circuit and District of Louisiana, in which he claimed judgment against the city for said Metropolitan Police taxes alleged to have been collected by the city and that in said suit, there was a final judgment against said R. F. Harrison, receiver, and in favor of this respondent, rendered by the United States Circuit Court on Jany., 1889.

And this respondent shows that this suit is brought for the same cause of action asserted in said two suits, and respondent pleads in bar of and against plaintiff's demand in this suit the said two judgments either and both constituting *res judicata* against plaintiff's demand.

Wherefore respondent prays that this peremptory exception of *res judicata* be sustained and plaintiff's suit be dismissed.

And should this exception be overruled and other otherwise then the City of New Orleans for answer to plaintiff's petition denies all and singular the allegations therein contained, except in so far as hereinafter specially admitted.

This defendant shows that the city did levy the taxes for the years 1874, 1875 and 1876, in accordance with, and to provide for the apportionments to be borne by the city, for the support of the Metro-

politan Police Force and District, as required by the act of the Legislature no. 74 of 1868, and other acts upon the subject;
188 that under the law, the city of New Orleans was required in discharge and settlement *pro tanto* of said apportionment made by the Metropolitan Police Board, and under the limitations and restrictions specified in the act, to receive in payment of taxes due to the city, the Metropolitan Police warrants issued for the payment of salaries of officers and employés, and for the expenses of the Metropolitan Police Force and District; that the Metropolitan Police Board created by said acts, was abolished in 1877, and all acts relating thereto, were then repealed; that thereafter on the — 1887, R. F. Harrison, was appointed receiver by the Civil District Court, to collect and receive said Metropolitan taxes, and this respondent shows that liable only for said Metropolitan Police taxes to the extent that they were collected by the City of New Orleans, as is shown by the annexed statement, that this respondent has fully and more than discharged all liability for said Metropolitan Police taxes collected, by the aforesaid Metropolitan Warrants received by respondents for taxes due to it, and by the amounts of said Metropolitan taxes collected by respondent and paid over to said Metropolitan Police Board, through its proper officers, and to said R. F. Harrison, receiver, the aggregate amount of said payments and said warrants received, having been in excess of all said taxes for the Metropolitan Police Force and District ever collected by said respondent; all of which more fully appears by the statement "A" exhibiting said apportionments and of taxes levied, collection thereof by the city, and the warrants received and payments made by respondent as hereinabove set forth, and hence the plaintiff has no basis for his demand made in this case, and special reference is made to said statement and said legislative acts for fuller explanation and greater certainty.

Wherefore, respondent prays for judgment in its favor.

189 (Signed) CARLETON HUNT, *City Att'y.*
HENRY C. MILLER, *For Def't.*

Statement "A."

Filed with Answer April 16, 1890.

United States Circuit Court, Eastern District of Louisiana.

No. 11899.

R. F. HARRISON, Receiver,
vs.
THE CITY OF NEW ORLEANS.

The city, never liable for more than the amount of Metropolitan Police taxes, has discharged in cash and in warrants its full liability for all the Metropolitan Police taxes ever collected. In 1874, 1875

and 1876, the apportionments of Metropolitan Police and the payment and redemption of Metropolitan Police taxes were as follows:

In 1874, the apportionment and levy were		$582,564.42
The collection of taxes for 1874 were		537,962.85
Payment to J. H. Ogelsby, Fiscal Agent for Metropolitan Police Board	$438,176.04	
L. T. Murdock, Treasurer	48,600.00	
R. F. Harrison, Receiver	2,669.96	
Metropolitan Police warrants received	42,811.22	
Aggregating	$532,257.22	
Now deducting		$532,257.22
Leaves		5,705.63
In 1875 the apportionment was		$590,527.59
Collection of Metropolitan Police tax- for 1875 were		540,015.47
190 Payment to L. Murdock	$484,717.22	
To R. F. Harrison	7,269.81	
To Metropolitan Police warrants received	37,466.59	
Aggregating	$529,453.62	
Now deducting		$529,453.62
Leaves		10,561.85
In 1876 the apportionment was		$499,991.16
The collections were		445,555.53
Paid to Murdock	$377,135.03	
To R. F. Harrison	47,829.15	
Metropolitan Police Warrants received	7,837.80	
Aggregating	$432,801.98	
Now deducting		$432,801.98
Leaves		12,753.55

See testimony of R. F. Harrison, printed pamphlet pages, *et seq.* 15 *et seq.*, 21 *et seq.*

For the collection of Metropolitan Police taxes for 1874, 1875 and 1876, not discharged by the payment and redemption of warrants above enumerated, the city was made liable in the suit of Harrison, receiver *vs.* City of New Orleans. The Supreme Court adjudged that the city was liable for thirty thousand nine hundred and forty four dollars for the Metropolitan Police taxes, for the years 1874, 1875 and 1876, collected by the city and the Court so adjudged to be due was paid to R. F. Harrison, receiver, on the *188* and that payment added to additional warrants received and payments above stated exceeds all Metropolitan Police taxes ever collected by the city.

191 *Motion to Fix Exceptions of Res Judicata.*

Filed April 26th, 1890.

United States Circuit Court, Eastern District of Louisiana.

No. 11899.

HARRISON, Receiver,
vs.
CITY OF NEW ORLEANS.

On motion of Charles Louque, attorney for plaintiff:

It is ordered, that the exception of *res judicata* be fixed for trial on Saturday next the 3rd day of May, 1890, at 11 o'clock a. m. and that Messrs. Carleton Hunt and H. C. Miller attorneys for defendant, be notified.

NOTE.—Saturday, May 3, 1890, exception of *res judicata* continued on motion of attorney for plaintiff, by request of counsel for defendant, to Saturday, May 10, 1890.

NOTE.—Saturday, May 10, 1890, exception ordered to go over until Saturday, May 17, 1890, at 11 a. m., on motion of Carleton Hunt, of counsel for defendants, by consent of attorney for plaintiff.

NOTE.—Saturday, May 17, 1890, exception of *res judicata* continued to Saturday, May 24, 1890, at 11 a. m. by consent of counsel for the parties, in open Court.

NOTE.—Saturday, May 24, 1890, exception of *res judicata* continued to Saturday, May 31, 1890, at 11 a. m. on motion of counsel for the parties.

192 NOTE.—Saturday, May 31, 1890, exception of *res judicata* continued to Saturday, June 7, 1890, on joint motion of counsel for the parties.

Amended and Supplemental Petition.

Filed May 31, 1890.

United States Circuit Court, Eastern District of Louisiana.

No. 11899.

R. F. HARRISON, Receiver,
vs.
CITY OF NEW ORLEANS.

To the Honorable the Judges of the United States Circuit Court for the Eastern District of Louisiana:

The supplemental and amended petition of R. F. Harrison, who is a citizen of the State of Mississippi, respectfully shows:

1. That by the orders and authority of the Civil District Court for the Parish of Orleans, he is the duly appointed and qualified

receiver of the Board of Metropolitan Police, a body corporate, formerly existing in this state, and that as such receiver he is authorized to collect and receive any and all sums of money due and owing to said board.

2. That an act of the Legislature of Louisiana, approved Sept. 14, 1868, created a Metropolitan Police District, and placed the government and control thereof, for police purposes in the Board of Metropolitan Police; that said act and subsequent acts of said Legislature supplemental to and amendatory thereof, required said board to make annually an estimate of the expenses of maintaining a police force in said District, and apportion the same to the several cities and parishes within said district and said cities and parishes were required by said acts to promptly pay and to provide the
193 means for promptly paying the amounts thus apportioned to them.

3. That the City of New Orleans was a municipal corporation created by the laws of said State, and was one of the cities within said Metropolitan Police District and that said board from and after its creation annually made the estimates of expenses and apportioned the same as required by said acts, up to the year 1877, when said several acts, relating thereto, were repealed and said board abolished.

4th. That the apportionment- made by said board to the City of New Orleans were as follows, viz:

For the year	1869	$877,595.
For the year	1870	838,274.07
" " "	1871	809,932.19
" " "	1872	724,460.90
		718,017.
" " "	1873	203,600.65
		713,208.40
" " "	1874	182,886.53
" " "	1875	587,723.
" " "	1876	500,000.

And that when said apportionments were made and notified to said city as they were, said city became liable to said board for the amount thereof.

That said city of New Orleans in her annual budget and in accordance with the requirements of said apportionments budgeted the amounts called for by the Board of Metropolitan Police.

That while said City of New Orleans was absolutely required to pay the sums thus apportioned to it, it was also by said acts authorized to raise the amounts required for that purpose by levying
194 taxes upon the persons and things subject to taxation within its jurisdiction and in pursuance thereof did levy and collect some taxes for that purpose and is still collecting such taxes, but the amounts levied and collected is insufficient to pay the amount due to said Police Board, and required to discharge its obligations,

that the assessment for said years and the rate of taxation was as follows:

For the year			
1869	¾ of 1 per ct. is.....	127942.781	$959,570.85
1870	¾ of 1 per ct. is.....	139848.204	1048,861.53
1871	595/1000 of 1 per ct. is.....	138413.58	823,560.81
1873	3235/10000 of 1 per ct. is.....	135894.850	439,619.84
1874	445/1000 of 1 per ct. is.....	130913.356	582,564.43
1875	495/1000 of 1 per ct.....	119288.504	590,478.10
1876	42/100 of 1 per ct. is.....	1190445.515	499,991.16
	Making a total of		

6th. That of the amounts apportioned to said city there is still unpaid and due the following sums, portions of which have been collected by the city, for 1869 to 1873 inclusive, seven hundred and ninety two thousand seven hundred and eighty five 00/100 dollars, and from 1874 to 1876 inclusive, one hundred and forty seven thousand five hundred and ninety four 58/100 dollars, making a total of nine hundred and forty thousand three hundred and seventy nine 66/100 dollars.

That the present City of New Orleans, a municipal corporation created by the laws of Louisiana and a citizen of said state (successor) to said City of New Orleans as existing at the time of the said apportionments, is liable therefor.

7th. That said Board of Metropolitan Police is indebted in a larger sum than that due by the said city aforesaid, said
195 indebted- being to holders of Metropolitan Police warrants and claims for services rendered to said board in pursuance of law under contract made with said board, upon the faith of its revenues applicable to their payment being unimpaired; but that the repeal of said act creating said district and board and of all laws providing for the payment of its expenses by the act of the Legislature of Louisiana approved March 31st, 1877, without making any provision for the payment of its debts under contract impaired the obligations of such contracts and to that extent is unconstitutional, null and void.

8th. That under the constitution of 1879 the funds of the different years prior to 1880 were mixed and the warrants of any year were made receivable for taxes of any year.

Wherefore petitioner prays that this supplemental and amended petition be filed, and that said City of New Orleans be cited to answer this demand, and that after due proceedings she be condemned to pay your petitioner, receiver of the Board of Metropolitan Police, the sum of nine hundred and forty thousand three hundred and seventy nine 66/100 dollars, with interest upon the amount due under each apportionment of police expenses to it by said board from the time *the time* the same became due and payable until paid or so much of said sum as may be necessary to discharge all

the debts of said Board and all costs of suit; and petitioner prays for general relief, etc.

(Signed) CHAS. LOUQUE, *Att'y.*

ROUSE & GRANT,
Of Counsel.

Let, as within prayed for, this supplemental and amended petition be filed, according to law.

New Orleans, May 31, 1890.

(Signed) EDWARD C. BILLINGS, *Judge.*

196 *Answer and Statement.*

Filed September 23, 1890.

United States Circuit Court.

No. 11899.

R. F. HARRISON, Receiver,
vs.
THE CITY OF NEW ORLEANS.

Now comes the defendant, the City of New Orleans, and reserving the benefit of and insisting upon all exceptions heretofore filed, excepts to the supplemental petition to this suit for this, to-wit:

That the plaintiff, R. F. Harrison, appointed receiver of the Board of Metropolitan Police by the Civil District Court for the Parish of Orleans, must sue in the Court of his appointment, to which he is solely accountable, under whose orders he must act, and he cannot sue in this Court.

And for further cause of exception this defendant shows:

That as appears by the petition, the Metropolitan Police Board, of which plaintiff is receiver, is a corporation created by the laws of Louisiana and is a citizen of Louisiana, that the plaintiff herein, receiver of said Board of Metropolitan Police, representing that corporation, cannot sue in this court upon the ground that he individually is a citizen of another state; that in effect this suit is between citizens of the same state, that is, the Metropolitan Police Board and the City of New Orleans, both Louisiana corporations and citizens of Louisiana, and hence this Court has no jurisdiction.

And this defendant further brings to the notice, and assigns as a further ground for dismissing this suit, that as appears on the face of the petition, the alleged cause of action is not cognizable at
197 law, but if any such cause of action existed, which is denied, the issue in respect thereto would have to be in equity.

And for further cause of exception this defendant shows:

That heretofore, to-wit: on the 21st of April, 1885, the plaintiff instituted suit against the defendant in the Civil District Court for the Parish of Orleans, for the same cause of action as stated in

plaintiff's petition, that is, the asserted liability of this defendant for the apportionments against the city by the late Board of Metropolitan Police, and the alleged liability of this defendant for metropolitan police taxes levied under the legislative acts organizing the metropolitan police force and district, that in said suit there was a final determination of said cause of action by the judgment of the Supreme Court of the State; rendered on the 11th of May, 1888, on the appeal taken by this defendant, which final judgment determined that defendant was liable to plaintiff for and by reason of said cause of action in the sum of thirty thousand nine hundred and forty-four dollars with interest, and no more, which judgment was satisfied by this defendant, and all controversy respecting the cause of action aforesaid now asserted by plaintiff was thus ended and closed, all of which more fully appears by the record of said suit of R. F. Harrison, Receiver, *vs.* The City of New Orleans, No. — of the docket of the Civil District Court; and the aforesaid final judgment of the Supreme Court therein, to which special reference is made for fuller explanation and greater certainty, and said judgment is now pleaded as *res judicata* against plaintiff's demand.

Wherefore, this defendant pleads all said exceptions against and in bar of plaintiff's demand, and prays that these exceptions be sustained and plaintiff's suit be dismissed.

And should these exception (exceptions) be overruled, and
198 not otherwise, then this defendant denies all and singular the allegations in plaintiff's petition contained, save and except as is hereinafter specially admitted.

Further answering, this defendant avers that under the Act of the Legislature of Louisiana No. 74 of 1868, and other acts organizing the metropolitan police district and metropolitan police, this defendant being embraced in said district, was required to levy annually and pay over as collected to the Board of Metropolitan Police a tax known as the metropolitan police tax, for the apportionments directed by said act to be made by said board against the city as its share for the support of the said metropolitan police district and force; that at and prior to the creation of said Board of Metropolitan Police, and at all times during its existence, the power of taxation of the City of New Orleans for the payment of its large bonded debt and interest, the support of the public schools, the expenses of the fire department, the salaries of the officers and employés of the city, and for all the purposes of municipal government, was limited first at $1.75 and thereafter at two dollars or two per cent. of the one hundred dollars of valuation of all the property assessed for taxation, as more fully appears by the acts of the Legislature of Louisiana No. 30 of 1870, extra session, section 12, and act No. 42 of 1871, to which special reference is made for fuller explanation and greater certainty, and the limitation in said act is made a part of this answer; that under this limitation of taxation, no larger apportionment for the expenses of the metropolitan police force and district could be made against the City of New Orleans by the Board of Metropolitan Police, and no greater amount could be raised by taxation for said expenses, than the just proportion sus-

ceptible of being applied thereto by the city out of its afore-
199 said maximum taxation, and said maximum taxation was entirely insufficient to pay the apportionments attempted to be made by said Board of Metropolitan Police; that instead of observing said limitation and restriction on the apportionments and on the expenses of said Metropolitan Police Board, the apportionments attempted to be made against the city during the entire period of the existence of said board, were greatly, that is, at least two-thirds in excess of the proportion aforesaid, to which and no more, said apportionments were limited by law, and to the extent of said large excess over the amount that could be apportioned against the city, each and all of said apportionments were in utter disregard of said limitation, in violation of law, and void and null.

And further answering, defendant shows that under the acts aforesaid relative to the metropolitan police force and district the city was not bound for the apportionments, but was required only to levy a tax for the aforesaid proportionate amount required for the police, and the city was liable only for the amount actually collected of said taxes; that under said acts, metropolitan police warrants issued by said board for the salaries of its officers, employés and expenses, were receivable for the taxes and licenses due to the city, but the amount of warrants to be received and of payments required of defendant under said acts, were not to be in excess of, but were restricted and limited to the amount of said metropolitan police tax actually collected under legal apportionments, and this defendant denies that there has been any mixture or misappropriation of the funds derived from said metropolitan police taxes, or that by the constitution of 1879, any other obligation was imposed on this defendant in the premises, save and except as stated above, that is, to
levy said metropolitan police tax to raise the limited amount
200 stated, and to receive said metropolitan police warrants and make payments to said board, the aggregate in warrants received and payments required to be made to be no more than the amount of the tax actually collected, and special reference is made to all said legislative acts organizing the metropolitan police force and district, for fuller explanation and greater certainty.

And this defendant further answering, avers, that the Board of Metropolitan Police created by said act was abolished in 1877, and all acts relative thereto were then repealed; that on the 5th of November, 1883, R. F. Harrison was appointed receiver by the Civil District Court for the Parish of Orleans, to collect and receive from the City of New Orleans said metropolitan police taxes.

And this defendant shows that in accordance with said acts, it levied the metropolitan police taxes, and collected in due course a portion thereof, that from time to time this defendant received in payment of the taxes due to it, a large amount in said metropolitan police warrants, to be credited to and allowed in favor of the city against its liability to said board under said acts, and besides said metropolitan police warrants received, this defendant in regular course as said metropolitan police taxes were collected, made large payments and settlements to and with said Metropolitan Police Board

through its proper representatives and said receiver, of said taxes collected, and liable only for the amount of said metropolitan police taxes actually collected and for no more, the amount thereof being shown by the statement herewith filed, this defendant shows that by the receipt of said metropolitan warrants in paymnt of taxes due to it, and by said settlements and payments to said board, and
201 subsequently to said receiver, this defendant has fully discharged said liability, and accounted for all said metropolitan police taxes ever collected, the said metropolitan police warrants and said payments and settlements aggregating in fact, an amount in excess of all said metropolitan police taxes ever collected, and a statement showing the said metropolitan police taxes collected for the years 1868,/1869 to 1876, the amounts of said metropolitan police warrants received, and the amounts of said payments and settlements of this defendant of said collected taxes, with all the particulars relative thereto, is herewith filed, to which special reference is made for fuller explanation and greater certainty.

Wherefore this defendant, reserving the benefit of and reiterating all the defences heretofore urged, prays that this supplemental answer be filed, and that there be judgment in favor of this defendant and against plaintiff, and for general relief.

(Signed) CARLTON HUNT,
HENRY C. MILLER,
Att'ys for Def't.

Statement.

Filed with Answer Sept. 23, 1890.

U. S. Circuit Court.

No. 11899.

R. F. HARRISON, Rec'r,
vs.
THE CITY OF NEW ORLEANS.

Statement of the amount collected of the Metropolitan police taxes levied by the City of New Orleans under the apportionments against the city by the Board of Metropolitan Police for
202 the years 1868/1869 to 1876, inclusive, and of the settlements with and payments of said taxes by the city to said board through its legal representatives and to R. F. Harrison, receiver, and of the Metropolitan police warrants issued by said board received, retired, and taken up by the city.

1868/1869.

The apportionment against the city by the Board of Metropolitan Police was..... $805,635.00

Under that apportionment there was delivered to the state treasurer authorized to receive for said board, eight hundred and five thousand six hundred and thirty five dollars in bonds of the City of New Orleans issued under the act No. 49 approved February 27th, 1869, which bonds were sold and proceeds applied by the board in payment of the salaries of officers, employés and expenses of said metropolitan police force and district. There were received by the City of New Orleans in payment of licenses and taxes redeemed and retired by the city by the issue of its bonds, metropolitan police warrants of 1868 and 1869, issued for the salaries of its employés, officers and expenses of said board to the amount of..... 236,223.46

1870.

The amount of metropolitan police taxes collected by the city was..... 439,961.82

Under the apportionment of the metropolitan police board against the city for this year, there
203 was received by the City of New Orleans in payment of taxes and licenses, metropolitan police warrants, issued for the salaries of officers, employés and expenses of said board to the amount of..... 560,824.51

1871.

There was collected by the city of metropolitan police taxes for 1871..... 149,459.10

Under the apportionment of 1871 by the Metropolitan Police Board, there was received in payment of taxes and licenses due to the city, and retired and cancelled by the issues of the obligations of the city, metropolitan police warrants issued for the salaries of officers, employés and expenses of said board to the amount of..... 818,531.70

1872.

The amount of metropolitan police tax for 1872 collected by the city was..... 545,683.86

Under the apportionment of said board for 1872, there was received by the city in payment of taxes and licenses, metropolitan police warrants issued for the salaries of officers, employés and expenses of said board, to the amount of..... 726,578.55

1873.

There was collected metropolitan police taxes levied for 1873..... 369,260.42

Under the apportionment of Metropolitan Police Board
204 for the year 1873, there was paid by the City of New Orleans under the agreement and by the direction of said Board of Metropolitan Police, the pay rolls of the metropolitan police force, the following amounts:

February 24th, 1873.....	$51,640.83
May 27th, 1873.....	36,558.39
	$88,199.23
And there was received under said apportionment of 1873, metropolitan police warrants issued for the salaries of officers, employés and expenses of said board to the amount of.....	743,430.04
	$831,629.27

Summary of collections of metropolitan police taxes of 1868/1869 to 1873, inclusive, and of metropolitan police warrants received and taken up by the city under the apportionments of said years, and of the payments to and settlements of said taxes with said Board of Metropolitan Police by the city.

Metropolitan police tax collected 1869 bonds delivered under apportionment were.....	$805,635.05
Metropolitan police tax collected 1870.....	439,961.82
Metropolitan police tax collected 1871.....	149,459.10
Metropolitan police tax collected 1872.....	545,683.86
Metropolitan police tax collected 1873.....	369,262.42
	$2,310,002.25

205 1869.

Amount of city bonds delivered to said board in settlement of apportionment for that year.....	$805,000.00
Metropolitan police warrants received and taken up under apportionment of 1869	236,223.46

1870.

Account of Metropolitan warrants received and taken up under the apportionment of 1870.....	560,824.51

1871.

Amount of Metropolitan Police warrants received and taken up	818,531.70

1872.

Amount of Metropolitan Police warrants received and taken up	726,578.55

1873.

Amount of Metropolitan Police warrants received and taken up	831,629.49

1874.

The Metropolitan Police tax levied by the City in 1874 was — per cent. on an assessment of $——.

The amount of said tax collected by the City was		$537,721.05
Of which Metropolitan Police tax collected there was paid to J. H. Oglesby, Fiscal Agent of the Metropolitan Police Board	$438,176.14	
Paid to the Treasurer of the Metropolitan Police Board	48,600.79	
Received in Metropolitan warrants against apportionments	42,811.12	
Paid to R. F. Harrison, Receiver	2,557.80	
	$532,145.85	

206 *Summary.*

Amount collected	$537,721.05
Amount of payments	532,145.85
Excess of collections over payments	5,575.20

1875.

The Metropolitan Police tax levied by the City in 1875, was — per cent. on an assessment of		$
The amount of said taxes collected by the City was		539,583.08
There was paid by the City of New Orleans of said collection, to E. T. Murdock, Treasurer of the Metropolitan Police	$484,717.22	
Paid to R. F. Harrison	7,269.81	
Received in Metropolitan Police warrants	37,466.59	
	$529,453.62	

Summary.

Amount of taxes collected	$539,583.08	
Amount of payments	529,453.62	
Excess of collections over payments	10,129.46	

1876.

The Metropolitan Police tax levied by the City in 1876 was — per cent. on an assessment of		$
The amount of said tax collected by the City was		443,623.12
There was paid by the City of said Metropolitan Police tax of 1876 collected, to the Treasurer of the Metropolitan Police Board	$377,135.03	
Paid to R. F. Harrison	47,779.15	
207 There was received by the City against said apportionment of 1876, Metropolitan Police warrants for the amount of	7,601.49	
	$432,515.67	

Summary.

Amount of collections	$443,623.12	
Amount of payments	432,515.67	
Excess collections over payments	11,107.45	

Summary of Deficiencies in the Payment of the Metropolitan Police Taxes for the Years 1874, 1875, 1876.

For the year 1874	$5,575.20
For the year 1875	10,129.46
For the year 1876	11,107.45
	$26,815.11

The above deficits in the collection over payments of metropolitan police taxes from 1874 to 1876 were all paid and settled by the City of New Orleans under the judgment of R. F. Harrison, *vs.* The City of New Orleans, 40 A. 570, rendered by the Supreme Court of the state on the 10th day of May, 1888, fixing the amount due by the city for said metropolitan police taxes collected and not accounted for, said payment being thirty thousand nine hundred and forty four dollars and ninety four cents.

NOTE.—November 8, 1890. Motion and order to set down cause entered and filed, and case fixed for trial November 25, 1890.

NOTE.—Tuesday, November 25, 1890. Cause continued to Monday, December 15, 1890, on motion of Carleton Hunt, City Attorney, and by consent of counsel for plaintiff.

NOTE.—Monday, December 15, 1890. Case continued to
208 Monday, December 22, 1890, at 11 a. m. on motion of counsel for defendant, attorneys for plaintiff consenting.

NOTE.—Monday, December 22, 1890. Cause continued to Wednesday, December 24, 1890, at 11 a. m., not being reached for want of time.

Supplemental and Amended Petition.

Filed November 17, 1902.

U. S. Circuit Court, Eastern District of Louisiana.

No. 11899.

R. F. HARRISON, Receiver,

vs.

THE CITY OF NEW ORLEANS.

To the Honorable the Judges of said Court:

The petition of Louis A. Hubert, herein acting as the duly appointed and qualified receiver of the Board of Metropolitan Police, respectfully represents:

That this suit was brought by said R. F. Harrison as receiver of said Board of Metropolitan Police, for the recovery of all sums of money due and owing by said defendant to said board; that said Harrison departed this life the — day of January, 1891; that your petitioner has been appointed receiver, and has succeeded to all the rights of said Harrison as plaintiff in this suit.

And he further shows that his powers as such receiver have been enlarged so as to authorize him to collect and recover all assets of said Board of Metropolitan Police, including all sums due to it; that said City of New Orleans, defendant, is indebted to said board for the sum of $241,106.54, balance due upon the apportionments made by said Board of Metropolitan Police for the years from 1869 to 1876, both inclusive, and in the further sum of $499,000,
209 the amount of the apportionment of police expenses for the year 1877, duly made and notified to said city.

And he further shows that said City of New Orleans has collected the sum of $411,884.89 of taxes for the purpose of paying its indebtedness to said board from 1869 to 1877, inclusive, which she has failed to pay over to said board, to said Harrison, receiver, or to your petitioner, and that said sum is now due and owing by said defendant and should be paid your petitioner, all of which will more fully appear from the detailed statement of such collections hereto annexed and made part of this petition.

And he further alleges, that the Act No. 35 E. S. passed by the Legislature of Louisiana, approved March 31st, 1877, repealing the act creating the Board of Metropolitan Police and amendatory acts, without making provisions for the payment of its debts, impaired

the obligation of the contracts made by said board with its employés, whose services had been rendered upon the faith of the execution of said law, and the resulting revenues and the application to their payment; that such employés are entitled to be paid out of such revenues, and your petitioner is entitled to recover the same, in order that they may be applied to their payment.

Wherefore petitioner prays that this supplemental and amended petition be filed, that he be substituted as plaintiff in this suit, that said City of New Orleans be required to answer this demand and after due proceedings be condemned to pay your petitioner the sum of ($740,106.54) seven hundred and forty thousand one hundred and six 54/100 dollars with legal interest from March 31st, 1877, until paid, with all costs. And petitioner prays for general relief, &c.

(Signed) CHS. LOUQUE,
ROUSE & GRANT,
Att'ys.

210 *Order.*

Let as within prayed for this supplemental and amended petition be filed, and let petitioner be substituted as plaintiff in this suit.

New Orleans, November 17th, 1902.

(Signed) CHARLES PARLANGE,
U. S. Judge.

Interest Collected by Sheriff and Retained by Him with the Consent of the City of New Orleans under Ordinance 6581, *A. S.*

		.595	
1871	$6,766.08	2.750	$1,466.09
		.32	
1873	6,438.97	2.750	686.82
		.445	
1874	11,812.77	2.5000	2,102.67
		.495	
1875	15,600.87	2.500	3,088.97
		.42	
1876	11,888.47	1.50	3,328.77
		.30	
1877	9,668.67	1.50	1,933.73
			$12,607.05
As per statement annexed ..			399,277.84
Total			$411,884.89

Metropolitan Police Tax and Interest Collections.

1869	Tax—Collections from 31 March, 1877, to 24 May, 1890, equals 6/19 of $9,422.00 or.....	$2,975.37
1870	Tax—Collections from 31 March, 1877, to 24 May, 1890, equals 2/7 of $17,859.98 or	5,102.85
1870	Int.—Collections from 31 March, 1877, to 24 May, 1890, equals 2/7 or $85.22 or.....	24.35
1871	Tax—Collections from 31 March, 1877, to 24 May 1890, equals 119/550 of $47,177.01 or.....	10,207.39
211		
1871	Int.—Collections to May 24, 1890, equals 119/550 of $91,794.55, or.....	19,861.00
1873	Tax—Collections from 31 March, 1877, to 24 May, 1890, equals 32/300 of $52,744.94, or.....	5,626.12
1873	Int.—Collections to May 24, 1890, equals 32/300 of $149,488.75, or	15,945.46
1874	Int.—Collections to 24 May, 1890, equals 89/500 of $109,796.10 or.....	19,543.70
1875	Int.—Collections to 24 May, 1890, equals 99/500 $62,134.63, or..	12,302.65
1876	Int.—Collections to 24 May, 1890, equals 42/150 of $33,800.88 or	9,464.25
1877	Tax—Collections from 22 March to 31 March, 1877.....	44,332.47
1877	Tax—Collections from 31 March, 1877, to 31 January, 1880.....	236,655.03
1877	Tax—Collections from 31 January, 1880, to 2 July, 1880, equals 3/13 of $2,205.02 or.....	508.85
1877	Tax—Collections from 5 July, 1880, to 24 May, 1890, equals 1/3 of $38,454.03 or.....	12,818.01
1877	Int.—Collections from 22 March to 31 March 1877, equals 1/5 of $2,083.26, or.....	416.65
1877	Int.—Collections from 31 March, 1877, to 24 May, 1890, equals 1/5 of $17,468.46 or.....	3,493.69
		$399,277.84

NOTE.—The per cent. for 1870 is in doubt. 2/7 is in accordance with the original levy.

Indorsed: We, the jury, find a verdict in favor of the exceptor, the City of New Orleans, on the exception to the supplemental and amended petition and against the plaintiff. Feb. 9, 1903. (Signed) J. B. Desangles, Foreman.

212 *Exceptions to Supplemental Petition.*

Filed December 2nd, 1902.

United States Circuit Court for the Eastern District of Louisiana.
No. 11899.

R. F. HARRISON
vs.
CITY OF NEW ORLEANS.

Now into Court, through undersigned counsel, comes the City of New Orleans, made defendant herein, and reserving the benefit of and insisting upon all the exceptions and defenses heretofore filed, and made herein, excepts to the supplemental petition filed herein on November 17th, 1902, on the following grounds:

1st. The Board of Metropolitan Police was a corporation organized and created by the laws of the State of Louisiana and was domiciled therein and was a citizen thereof.

2nd. That the City of New Orleans is also a Louisiana corporation.

3rd. That the plaintiff herein, Louis A. Hubert, is also a citizen of the State of Louisiana.

4th. That all parties hereto being citizens of or corporations of Louisiana, this Hon. Court is without jurisdiction to hear or try this suit.

5th. That the said Louis A. Hubert was appointed receiver of the Board of Metropolitan Police by order of the Civil District Court and as defendant is a Louisiana corporation, he must sue in the State Court, to which he is solely accountable.

6th. That the said Louis A. Hubert has never been authorized by the Court of his appointment to bring this suit and, therefore, cannot stand in judgment.

Wherefore defendant excepts to the jurisdiction of this Hon. Court and prays that these exceptions be sustained and plain-
213 tiff's suit be dismissed and for general relief.

(Signed) FRANK B. THOMAS,
Att'y for Defendant.

Motion and Order Fixing Exceptions to Supplemental Petition for Trial.

Extracts from the Minutes, November Term, 1902.

NEW ORLEANS, SATURDAY, *December* 6, 1902.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, District Court.

No. 11899.

R. F. HARRISON
vs.
THE CITY OF NEW ORLEANS.

On motion of Charles Louque and Rouse & Grant, attorneys for Louis A. Hubert, the duly qualified receiver of the Board of Metropolitan Police and plaintiff herein:

It is ordered by the Court that the exceptions herein filed by defendant, the City of New Orleans, be fixed for trial on Monday, the 15th day of December, 1902, at 11 o'clock a. m. and that Frank B. Thomas, attorney for defendant, be notified thereof.

NOTE.—Monday, December 15, 1902.—Cause continued to Saturday, Jan'y 3, 1903, at 11 a. m., to be heard upon the exceptions, on motion of counsel for the parties—the cause not being reached for want of time.

Case Called, Jury Empaneled, Hearing of Exceptions and Continuance.

214 Extract from the Minutes, November Term, 1902.

NEW ORLEANS, SATURDAY, *January* 3, 1903.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, District Court.

No. 11899.

LOUIS A. HUBERT, Receiver,
vs.
THE CITY OF NEW ORLEANS.

This cause came on to be heard upon the exceptions filed by the defendant to the supplemental petition.

Rouse & Grant and C. Louque appearing for plaintiff.

Frank B. Thomas, Ass't City Att'y, for City of New Orleans, Exceptor.

Whereupon the following named jurors were called and sworn to well and truly try the issue joined herein, to-wit:

1. W. J. Barkley,
2. Dougles H. Holmes,
3. Chas. F. Julier,
4. J. N. Reily,
5. J. C. Hodgson,
6. Chas. H. Lagan,
7. Jno. B. Desangles,
8. C. F. Terrell,
9. J. Frank Campbell,
10. W. L. McConnell,
11. R. M. Ong, Jr.,
12. Numa E. Bertel,

When the Court appointed W. J. Barkley foreman of the jury and the trial was proceeded with.

After hearing the pleadings, it was ordered on motion of counsel that the cause be continued to Saturday, January 10, 1903, at 11 a. m.

NOTE.—Saturday, January 10, 1903.—Cause continued to Saturday, January 17, 1903, at 11 a. m., to be further heard upon the exception of defendant to the supplemental and amended petition, by agreement of counsel for the parties.

215 NOTE.—Saturday, January 17, 1903. Cause continued by consent to Wednesday, January 21, 1903, at 11 a. m. for further hearing on the exception of defendant to the supplemental petition, on motion of Rouse & Grant, attorneys for plaintiff.

Hearing and Continuance.

Extract from the Minutes, November Term, 1902.

NEW ORLEANS, WEDNESDAY, *January* 21, 1903.

No. 11899.

R. F. HARRISON, Receiver,
vs.
THE CITY OF NEW ORLEANS.

This cause as continued from Saturday, January 17, 1803, was this day resumed, counsel for the respective parties and the jurors empaneled in the cause being all present. Before the trial was proceeded with, Mr. Barkley, foreman of the jury, desiring to be excused on account of pressing business, it was agreed by counsel for the parties to excuse Mr. Barkley from further service in the case, and to substitute another juror in place of said Barkley. And thereupon the latter was excused and Washington Smith was sworn and empaneled as a juror in the case in place of said Barkley. The Court appointed J. B. Desangles foreman of the jury and the trial was proceeded with.

After hearing the evidence offered by both parties and arguments from the counsel in the case, the Court ordered that same be continued until tomorrow at 11 a. m.

Hearing Further Arguments, Submission of Questions of Law Raised by the Parties, and Continuance of Cause.

Extract from the Minutes, November Term, 1902.

216 NEW ORLEANS, THURSDAY, *January* 22, 1903.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, District Judge.

No. 11899.

R. F. HARRISON, Receiver,
vs.
THE CITY OF NEW ORLEANS.

This cause as continued from yesterday came on this day to be further heard upon the exceptions of defendant to the supplemental and amended petition, and the counsel for the parties respectively, as well as the jurors empaneled in the cause, being all present, the trial was proceeded with.

After hearing further arguments from the counsel for the parties, the questions of law raised by the parties were submitted to the Court and the cause was continued.

EXCEPTOR'S (DEFENDANT'S) EVIDENCE.

Supplemental Petition for Appointment of Receiver.

Extract from Record of Supreme Court of La.

Filed Nov. 14/77.

Filed in U. S. Circuit Court Jan. 22, 1903.

No. 24877, Late 3rd District Court, Now No. 14004 of the Civil District Court.

A. BRITTIN
vs.
CITY OF N. O. ET AL.

The supplemental petition of plaintiff respectfully shows:

That since the repeal of the act abolishing the Board of Metropolitan Police*m* the taxes assessed, levied and paid for the use of the said board have been received in part by J. C. Denis, Esq.,
217 who is the administrator of finance of the City of New Orleans, and that further collections in this behalf are daily made by said Denis.

Your petitioner shows that there is no existing law of the State by

virtue of which the City of New Orleans or the said Denis in his official capacity of administrator, has the right to collect and pay out the said fund to the creditors of the late Board of Metropolitan Police.

Your petitioner further shows that he is interested as holder of certificates of indebtedness of the said Board of Metropolitan Police and in the distribution of the accrued and accruing collections made and being made by the said Denis—that said fund is held by the said Denis without warrant of law and that he refuses to pay out or administer the same.

Your petitioner further shows that the said fund exceeding $10,000, so received as aforesaid, is claimed by divers parties, and that in order to preserve the said fund, for the interest of all parties concerned, and to ensure the receipt of the taxes properly applicable to the said fund, and to make due and proper distribution thereof, the exercise of the equitable powers of this Court is invoked for the appointment of a receiver to take and receive the taxes collected as aforesaid for the years 1874, 1875 and 1876 and the taxes hereinafter to be collected for the same years, and which were assessed and levied for the benefit of the said Board of Metropolitan Police, and that J. C. Denis, Esq., Administrator of Finance, be directed to pay over to the receiver to be appointed by the Court all such sums as he may have collected or may hereafter collect on account of said fund of the taxes for the year 1876, assessed, levied or paid for account of, or the use of, the late Board of Metropolitan Police, and that said receiver so appointed, be required to give bond with good and
218 sufficient security in such sum as the Court may direct, and that he be ordered and required to hold the funds and monies which may come into his possession subject to the further orders, directions and decrees of this Court, and petitioner prays for all proper orders in the premises.

(Signed) THOS. HUNTON, *Att'y.*

We concur in the foregoing application for the appointment of a receiver.

(Signed) T. H. FLANAGAN,
Att'y for H. F. Swrthinham et al.

I concur in the foregoing application.

(Signed) J. A. AUSTIN,
Att'y for D. B. Penn, Sheldon Lee, and Others.

I concur in the recommendation of a receiver and consent to R. F. Harrison.

(Signed) H. C. MILLER.
THEO. HUNTON.

No objection.

(Signed) B. F. JONAS,
City Attorney and Att'y for J. C. Denis, Adm'r.

Order.

Considering the allegations and prayer of the foregoing petition, and the informal application to the Court on the 29th of October, 1897, on behalf of the City of New Orleans and J. C. Denis, Administrator of Finances of said city, for the appointment of a receiver. It is ordered that R. F. Harrison be and is appointed receiver herein and that he is authorized to demand and receive from J. C. Denis, Esq., Administrator of Finance of the City of New Orleans, or from the said city, or any other person, any and
219 all sums which may have been or may hereafter be collected, or received for or on account of the Metropolitan Police tax for the year 1874, 1875 and 1876.

And it is further ordered that before exercising the functions of receiver herein, the said R. F. Harrison shall file his bond in Court, with good and sufficient security to be approved by the Court, in the final sum of thirty thousand dollars conditioned for the faithful performance of his duties as receiver.

(Signed) F. A. MONROE.

Petition to be Authorized to Collect All Assets of the Board of Metropolitan Police and to Sue.

Filed May 15, 1890.

Civil District Court, Parish of Orleans, Div. "E."

No. 11899.

STATE OF LOUISIANA *ex Rel.* A. BRITTIN ET AL.
vs.
THE CITY OF NEW ORLEANS.

The petition of R. F. Harrison respectfully represents:

That he was heretofore duly appointed receiver in the above named cause, and authorized to collect and receive from said City of New Orleans certain Metropolitan Police Taxes, by it receiver, and applicable to the payment of the warrants issued by said Metropolitan Police Board, and other indebtedness thereof; that he has made such collections, so far as he has been able, but that the amounts realized are insufficient to pay and discharge the lawful and just claims against said Board, and that a large amount remain due and unpaid; that he has been advised that the said City of New Orleans and other corporations within the Metropolitan Police district as constituted under said act creating the same are absolutely liable for the amount of police expenses apportioned to them respect-
220 ively, and *and* that there are large amounts due by corporations on that account, and that the same, if collected, will be sufficient to nearly if not quite extinguish the indebtedness of said board.

Wherefore he prays that his powers may be enlarged and that he be appointed receiver of and for said Board of Metropolitan Police and as such authorized to sue for and collect all the assets and debts due to said board, and that such authority be in addition to that heretofore granted to him.

(Signed) CHS. LOUQUE,
Att'y for Petitioner.

Order.

Considering the foregoing petition and the allegations thereof, it is ordered that said R. F. Harrison, heretofore appointed receiver on said cause, be and he is hereby authorized and empowered to collect and get in, all the assets of the Board of Metropolitan Police, and to sue for and recover all debts due to it, and to hold and dispose of the same under the directions of this Court, this authority being in addition to that heretofore given him by the orders of this Court.

15 May 1890.

(Signed) ALBERT VOORHIES, *Judge*

Petition for the Appointment of a New Receiver.

Filed January 2nd, 1891.

Civil District Court, Division "E."

No. 14004.

STATE *ex Rel.* A. BRITTIN ET ALS.
vs.
BOARD OF METROPOLITAN POLICE.

To the Hon. the Civil Dist. Court for the Parish of Orleans:

221 The joint petition of Frank A. Lee & Co., C. H. Stewart, Est. of S. P. Blanc *et als.* appearing herein for themselves and all other holders of claims against the Board of Metropolitan Police, respectfully represents:

That R. F. Harrison, the receiver herein, duly appointed and qualified in this Hon. Court, departed this life in this city on the 30th day of December, 1890.

That it becomes absolutely necessary to have a new receiver appointed with all the powers lately granted to said Harrison in order to collect the assets and pay the debts of said Board; and to sue in any Court, or as in the Judg- of said receiver may seem proper.

That such bond as this Hon. Court may deem necessary to secure the interest of all parties concerned should be fixed by the Court:

Wherefore petitioners pray that a receiver be appointed herein with all the powers possessed and granted to the late receiver herein, to collect any and all assets belonging to and due to the late Board

of Metropolitan Police and to sue therefore in any and all court on giving bond in such sum as this Hon. Court may fix, conditioned, as the law directs and petitioners pray for general relief, &c.

(Signed) CHS. LOUQUE, *Att'y.*

Chs. Louque being duly sworn says that Richard F. Harrison, the late receiver herein, departed this life, in this city, in the 30th day of December, 1890.

(Signed) CHS. LOUQUE.

Sworn to and subscribed before me this 2nd day of January, 1891.

[SEAL.] (Signed) E. A. LUMINAIS, *Clerk.*

222 *Order.*

Let as within prayed for Joseph P. Horner, Esq., be and he is hereby appointed receiver of the board of metropolitan police, on his giving bond in the sum of ten thousand dollars conditioned as the law directs, with any and all powers possessed by receivers and such as well (will) enable him to realize all the assets of the Board of Metropolitan Police and collect the debts due to it, and to that end sue and continue any and all suits in any and all court- and especially the suit entitled R. F. Harrison, Recr., *vs.* City of N. O., Number 11,899 of the U. S. Circuit Court for this Dist.

New Orleans, January 2nd, 1891.

(Signed) ALBERT VOORHIES, *Judge.*

Motion to Rescind Orders.

Filed Jan'y 5, 1891.

Civil District Court.

No. —.

A. BRITTIN
vs.
THE CITY OF NEW ORLEANS.

Now comes the City of New Orleans by its counsel, Carleton Hunt and Henry C. Miller, and moves the Court to set aside and correct the order made by this Court on the 3d day of January, 1891, appointing Joseph P. Horner receiver of the board of metropolitan police and the order enlarging the power of R. F. Harrison as receiver made on the — April 1890, on the ground:

That the Court was without jurisdiction to make said orders as it was made exparte on the application of alleged creditors of the city and without notice or hearing given to the city entitled to
223 be heard upon any application to appoint a receiver in this case.

2nd. That the order was improvidently made and no showing whatever was made for the appointment of a receiver.

3rd. That said Horner is a non resident, a citizen of Mississippi, and the Court could not consistently with the spirit and policy of the new law confer such an appointment on a non resident.

Judgment on Rule.

Division "E."

No. 14,004.

STATE *ex Rel.* A. BRITTIN ET ALS.
vs.
CITY OF NEW ORLEANS.

This cause having been submitted to the Court for adjudication on rule to vacate decrees herein granted and taken under advisement, and the Court for the reasons assigned in the written opinion on file herein, considering the law and the facts to be in favor of plaintiff in rule:

It is therefore ordered, adjudged and decreed that the said rule to vacate decrees herein be and the same is hereby made absolute, and, accordingly, it is now ordered and decreed that the decrees of April 2d and May 15th, 1890, enlarging the receiver's powers, and of January 2nd, 1891, appointing a successor to the deceased receiver, R. F. Harrison, be and the same are hereby vacated with costs of rule.

Judgment rendered January 9th, 1891.

Judgment signed January 15th, 1891.

(Signed) ALBERT VOORHIES, *Judge.*

224 *Motion to Enter Decrees of Supreme Court and for Appointment of Receiver.*

Filed December 19th, 1899.

Entered on Minutes of Same Date.

On motion of W. B. Sommerville, assistant city attorney, and Branch K. Miller, attorney representing defendant, and upon presenting to the Court the judgment of the Supreme Court of the State of Louisiana herein rendered on the 11th day of May, 1891, in this cause:

And upon further suggesting that a receiver should be appointed herein as the successor of R. F. Harrison, receiver, deceased, for the purpose of closing this litigation:

It is ordered, that the decree of the Supreme Court herein rendered, and filed herewith, be entered on the minutes of this Court and made the order and decree of this Court in this cause; and that plaintiff be notified of this application for the appointment of a successor to

the said R. T. Harrison, receiver, in this case, upon giving bond and that he show cause, if he have or can, on Thursday, Dec. 21, 1899, at 11 a. m., why a receiver should not be appointed to succeed R. T. Harrison, deceased.

N. O. Dec. 18/99. .

Return on Motion.

Filed December 21st, 1899.

Received Tuesday, Dec. 19, 1899, and on the 20th day of December, 1899, I served a copy of the within motion and order personally on Abe Brittin, plaintiff herein.

Returned same day.

(Signed) A. ARTHUR BLANC, *D'y Sh'ff.*

Shff's fee, 50c.

225 *Submitted.*

Extract from the Minutes of Division "E."

THURSDAY, *December 21st*, 1899.

Present: Hon. George H. Theard, Judge.

Civil District Court, Parish of Orleans, Division "E."

No. 14004.

STATE *ex Rel.* A. BRITTIN ET ALS.

vs.

CITY OF NEW ORLEANS.

The rule herein taken by defendants on December 19th, 1899, against the plaintiff, for the appointment of a receiver to succeed R. F. Harrison, deceased, came on this day for trial.

Present: W. P. Sommerville, Esq., for plaintiff in rule. Defendant in rule absent and not represented by counsel.

And after hearing pleadings and evidence, the matter was submitted, and the Court took the same under advisement.

Absolute Judgment.

Civil District Court, Parish of Orleans, Division "E."

No. 14,004.

STATE *ex Rel.* A. BRITTIN ET ALS.

vs.

CITY OF NEW ORLEANS.

In this matter submitted for adjudication on the rule herein taken by the defendant on December 19th, 1899, to show cause why a re-

ceiver should not be appointed to succeed R. F. Harrison, Receiver, deceased, the Court, considering the law and the evidence to be in favor of plaintiff in rule, for the reasons this day orally assigned:

It is ordered, that the said rule be made absolute, ordering that Louis A. Hubert, Esq., be and he is hereby appointed receiver of the Board of Metropolitan Police, to succeed R. F. Harrison, deceased, upon his furnishing bond, with good and solvent surety, conditioned according to law, in the sum of two thousand five hundred dollars.

226 Judgment rendered in open Court, December 22nd, 1899.
Judgment signed in open Court January 5th, 1900.
(Signed) GEO. H. THEARD, *Judge.*

Judgment Signed.

Extract from the Minutes of Division "E."

FRIDAY, *January 5th,* 1900.

Present: Hon. George H. Theard, Judge.

The judgment rendered in this case on December 22nd, 1899, was signed this day in open Court.

Oath of Receiver.

Filed January 10th, 1900.

State of Louisiana, Civil District Court for the Parish of Orleans, Division "E."

No. 14004.

A. BRITTIN ET ALS.
vs.
CITY OF NEW ORLEANS.

Before me, Jos. D. Rankin, deputy clerk of the Civil District Court for the Parish of Orleans, personally came and appeared Louis A. Hubert, who solemnly swear (swears) that he will well and faithfully perform all and singular the duties of receiver in the matter above mentioned. So help him God.

(Signed) L. A. HUBERT.

Sworn to and subscribed before me.
New Orleans, January 10th, 1900.
[SEAL.] (Signed) JAS. D. RANKIN,
Deputy Clerk.

227 *Bond and Letters.*

Filed January 22nd, 1900.

Civil District Court, Parish of Orleans, Division "E."

No. 14004.

STATE *ex Rel.* A. BRITTIN ET ALS.
vs.
CITY OF NEW ORLEANS.

Receiver's Bond.

Bond.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "E."

Know all men by these presents, that we, Louis A. Hubert, as principal, and Ernest Hubert, as surety, of the State of Louisiana, are held and firmly bound unto the Judges of the Civil District Court for the Parish of Orleans in the sum of two thousand five hundred dollars, current money of the United States of America, which we promise to pay to them or their successors in office, for the faithful performance of which we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, renouncing all benefits or division or discussion whatever.

Sealed with our seals this 10th day of January in the year of our Lord nineteen hundred and the one hundred and twenty-fourth of the Independence of the United States of America.

Now, the conditions of the above obligation is such that if the above bounded Louis A. Hubert, receiver appointed by this Honorable Court in the matter of A. Brittin, *et als., vs.* City of N. O., does well and truly, according to law, administer and liquidate the affairs of the same, and further does make and render a true, just and perfect account of his action and doing, when thereunto lawfully required agreeable to law, then this obligation to be void, or else to remain in full force and virtue.

In witness whereof, we have hereunto set our hands and seals this day and year first above written.

228 (Signed) L. A. HUBERT.
(Signed) E. HUBERT.

In the presence of:

(Signed) PAUL O. GUERIN.
(Signed) P. A. DUCOING.

Ernest Hubert, being duly sworn, says that all his debts and liabilities being paid, he is well worth the sum of two thousand five hundred dollars, and that he resides in the Parish of Orleans.

(Signed) E. HUBERT.

Sworn to and subscribed before me, this 19th day of January, A. D. 1900.

(Signed) J. F. MEUNIER, *Not. Pub.*

Letters.

Filed Jan. 22nd, 1900.

State of Louisiana, Civil District Court for the Parish of Orleans, Division "E."

No. 14004.

STATE *ex Rel.* A. BRITTIN

vs.

CITY OF NEW ORLEANS.

This shall certify to all whom it may concern, that on the twenty-second day of December in the year of our Lord one thousand eight hundred and ninety-nine and the one hundred and 24th of the Independence of the United States of America a judgment rendered by the Honorable Geo. H. Theard, Judge of the Civil District Court for the Parish of Orleans Division "E," appointing Louis A. Hubert receiver of the Board of Metropolitan Police, to succeed R. T. Harrison, deceased.

Now, know ye, that Louis A. Hubert has been and he is hereby appointed receiver of the said Board of Metropolitan Police and that he had fulfilled all the requisites of the law.

Witness our hand and the seal of the said Civil District
229 this 22nd day of January in the year of our Lord one thousand nine hundred "1900" and in the one hundred and 24th of the Independence of the United States.

(Signed) GEO. H. THEARD, *Judge.*

(Signed) JAS. D. RANKIN, *D'y Clk.*

Rule of Receiver Against the City.

Filed Oct. 16th, 1900.

Entered on the Minutes of Same Date.

Civil District Court, Parish of Orleans, Division "E."

No. 14004.

STATE *ex Rel.* A. BRITTIN ET ALS.

vs.

CITY OF NEW ORLEANS.

On motion of Charles Louque, attorney for Louis Hubert, appointed receiver herein, and on suggesting to the Court:

That a suit has been instituted herein by Wid. Francoise Begue and against your petitioner for the recovery of a judgment payable out of the Metropolitan Police tax prior to 1879; un (under) No. 63,222 of the docket of this Court; and on further suggesting:

That under the Constitution of 1879 under the heading: "Relief of Delinquent Tax Payers," and under Act 49 of 1880; all of said Metropolitan Police Tax have been consolidated under one fund; and on further suggesting:

That in order to properly and authoritatively defend the suit herein and for the purpose of fully administering said fund, it is necessary that the powers of your mover as receiver be extended and enlarged to cover the administration of all the Metropolitan Police tax levied prior to 1879, under various acts of the Legislature relative to the Metropolitan Police; and on further suggesting:

That the original appointment of R. F. Harrison only
230 covered the taxes of 1874, 1875 and 1876;

It is ordered by the Court that the City of New Orleans do show cause on Friday, the 19th of October, 1900, at 11 o'clock a. m., why the powers of your mover as receiver of the Board of Metropolitan Police should not be enlarged so as to include all of the assets, claims and taxes owned, controlled or due to the Board of Metropolitan Police prior to 1879.

Continued.

Extract from the Minutes of Division "E."

FRIDAY, *October 19th*, 1900.

Present: Hon. George H. Theard, Judge.

This rule was ordered continued to Friday, October 26th, 1900, at 11 a. m.

Continued.

Extract from the Minutes of Division "E."

FRIDAY, *October 26th*, 1900.

Present: Hon. George H. Theard, Judge.

This rule was ordered continued to Friday, November 2nd, 1900.

Answer of City of New Orleans.

Filed November 2nd, 1900.

Civil District Court, Parish of Orleans, Division "E."

No. 14004.

STATE *ex Rel.* A. BRITTIN ET ALS.

vs.

CITY OF NEW ORLEANS.

Now into this Honorable Court comes the City of New Orleans, defendant herein, and for answer to the rule herein taken by Charles

Louque, attorney for L. A. Hubert, appointed receiver herein, ordering this defendant to show cause on Friday, the 19th day
231 of October, 1900, at 11 a. m., why the powers of said receiver should not be enlarged so as to include all of the assets, claims and taxes owned or controlled by the Board of Metropolitan Police prior to 1879, says:

1st. That there is no necessity for the enlargement of the power of the receiver for the purpose of defending the suit of the Widow Francois Begue, instituted against him and referred to in said rule, for the reason that the receiver has a sufficient defense to said suit without the enlargement of his power, and that it is neither proper nor necessary that the receiver, on his own motion, should be placed in a position to defend suits which are not properly brought.

2nd. That the Metropolitan Police taxes for the years prior (to) 1877, when the Metropolitan Police Board was abolished and repealed, have not been consolidated into one found by the miscellaneous ordinances of the Constitution of 1879, Act of 1880, or by any constitutional or legislative act.

3rd. That there are no assets belonging to or claims or taxes due to the Board of Metropolitan Police or to the receiver, prior to the year 1874, and if there are any assets owned by or claims or taxes due to the Board of Metropolitan Police or to the receiver, at all, which defendant denies, they are due for the years 1874, 1875 and 1876.

4th. That even were it necessary that the powers of the receiver should be enlarged, so as to enable him to defend the said suit of Widow Francois Begue, it is not necessary that the power of the receiver should be enlarged so as to cover the administration of all the Metropolitan Police taxes levied prior to 1879.

Wherefore defendant prays that the rule herein taken be dismissed at mover's cost; and for general relief.

(Signed) F. B. THOMAS,
Asst. City Attorney.

232 *Submitted.*

Extract from the Minutes of Division "E."

FRIDAY, *November 2nd*, 1900.

Present: Hon. George H. Theard, Judge.

The rule herein taken by Louis A. Hubert, receiver herein, on October 16th, 1900, to extend his power as receiver of the Board of Metropolitan Police, came on this day for trial—present, Charles Louque, Esq., for plaintiff in rule; F. B. Thomas, Esq., for the City of New Orleans, defendant in rule; B. K. Miller, Esq.—and after hearing evidence and counsel, the Court took the matter under advisement.

Rule Absolute (Judgment).

Minutes November 14, 1900.

Civil District Court, Parish of Orleans, Division "E."

No. 14004.

STATE *ex Rel.* A. BRITTIN ET ALS.
vs.
CITY OF NEW ORLEANS.

The law and evidence, being in favor of the plaintiff in rule for the reasons this day orally assigned by the Court:

It is ordered, adjudged and decreed that the rule herein taken by Louis A. Hubert, receiver of the Board of Metropolitan Police on October 16th, 1900, against the City of New Orleans, be made absolute, and that accordingly the powers of said receiver of the Board of Metropolitan Police be and they are hereby enlarged, so as to include all of the assets, claims and taxes owned and controlled by, or due to the said Board of Metropolitan Police to 1879.

233 *Copy of Judgment.*

Filed Jan. 22, 1903.

No. 11899.

United States Circuit Court, Eastern District of Louisiana.

R. F. HARRISON
vs.
CITY OF NEW ORLEANS.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I hereby certify that on the 14th day of November, 1900, judgment was rendered in this Court in the following entitled suit, in the words and figures following, to-wit:

No. 14004.

STATE *ex Rel.* A. BRITTIN ET ALS.
vs.
CITY OF NEW ORLEANS.

Judgment.

The law and evidence being in favor of plaintiff in rule, for the reasons this day orally assigned by the Court:

It is ordered, adjudged and decreed that the rule herein taken by Louis A. Hubert, Receiver of the Board of Metropolitan Police, on October 16th, 1900, against the City of New Orleans, be made absolute, and that accordingly the powers of the said Receiver of the Board of Metropolitan Police be and they are hereby enlarged so as to include all of the assets, claims and taxes owed and controlled by, or due to the said Board of Metropolitan Police, prior to 1879.

Judgment rendered in open court November 14, 1900.

Judgment signed in open Court November 20th, 1900.

(Signed) GEO. H. THEARD, *Judge.*

In testimony whereof, I have hereunto set my hand and
234 affixed the seal of this Court, at the City of New Orleans, this twenty-second day of November, in the year of our Lord, one thousand nine hundred (1900).

[SEAL.] (Signed) J. McCORMICK,
Deputy Clerk.

(Stamped:) Civil District Court, Nov. 22, 1900. Paid. Thomas Connell, Clerk.

No. 13748.

STATE *ex Rel.* BRITTIN
vs.
CITY OF NEW ORLEANS.

The opinion of the Court was delivered by PROVOSTY, *J.*:

This is an appeal from an order granting enlarged powers to the receiver heretofore appointed to have charge of the affairs of the defunct corporation known as the Board of Metropolitan Police.

In 1868 the Legislature created a Metropolitan Police District, and placed the government and control thereof in a Board known as the Board of Metropolitan Police. Said act and the acts supplementary thereto required said Board to make annually an estimate of the expense of maintaining a police force in said district, and to apportion the same to the several cities and parishes within said district; and required said cities and parishes to provide the means for promptly paying the amounts thus apportioned to them. The City of New Orleans was one of the cities within said district. Under the appor-

tionments made for the years 1869, 1870, 1871, 1872, 1873, 1874, 1875 and 1876, the amount payable by the City of New Orleans was approximately $800,000 per year. The said Board went out of existence in 1877, leaving a large outstanding indebtedness represented by warrants issued to policemen, etc., and large claims
235 against the city for amounts due under the yearly apportionments; which amounts had thus remained unpaid because of the non-collection of the taxes imposed to meet the payments.

The present suit of State *ex rel.* A. Brittin *vs.* City of New Orleans, was instituted in 1877. The relator alleging himself to be the holder of warrants issued by the said defunct Board for salaries of policemen for the month of November, 1876, to the amount of $9,842.65, and that the city had collected and had on hand $26,000 of the funds provided by law for paying said warrants, prayed for a mandamus to the city to pay the said debt out of the said fund. The order for mandamus was signed by the judge, but was not further acted on. A month later the same relator filed a supplemental petition in which he prayed for the appointment of a receiver upon the following allegations, to-wit: That the city had collected the taxes imposed for the use of the said defunct Board, and that there was no existing law by which she could pay same to the creditors of said defunct Board; that he was interested as a holder of certificates of indebtedness of the said Board in the distribution of the accrued and accruing collections made and being made of said taxes; that the said fund so received, exceeding $10,000, was claimed by divers parties, and that in order to preserve the said fund for the interest of all parties concerned, and to insure the receipt of the taxes properly applicable to said fund, and to make proper distribution thereof, a receiver should be appointed to take and receive the taxes collected as aforesaid for the years 1874, 1875 and 1876, and the taxes hereafter to be collected for the same years. The City of New Orleans informally consented to the appointment of the receiver and he was accordingly appointed.

The prayer was that the receiver should be authorized to demand and receive the amounts collected on the taxes of the years
236 1874, 1875 and 1876; and the appointment was made according to the prayer. Why the powers of the receiver were thus restricted to three out of eight years for which taxes were imposed does not appear.

The receiver brought suit against the City of New Orleans on her liability to account for these taxes of 1874, 1875 and 1876, and recovered judgment for some $30,000. This amount he distributed pro rata to the creditors, after satisfying privileged claims. Afterwards he applied to the court for an enlargment of his powers, so as to enable him to demand of the city the collection of the taxes of the other years. The court made an order granting the application. Shortly afterwards the receiver died, and a number of creditors applied for the appointment of a successor with the same enlarged powers, and the appointment was accordingly made. This granting of enlarged powers and this appointing of a successor to the late receiver had been done *ex parte*, without notice to the City of New

Orleans. On this ground of want of notice, the city caused the order to be set aside. This was in May, 1891.

In this condition matters remained until December, 1899, when the city herself applied to the court for the appointment of a successor to the late receiver. In the application it was stated that the appointment was asked to be made "for the purpose of closing this litigation." Accordingly the present receiver was appointed; and the present application for enlarged powers is his first act towards closing the litigation, except that in October, 1900, a suit was filed against him by a Mrs. Begue, a holder of warrants of the late Board, and judgment was rendered against him for some $5,00.

237 This application for enlarged powers was made and was granted contradictorily with the city. The prayer of the receiver is that his powers be so enlarged as to enable him to demand of the city and receive the amounts collected on the taxes for all the years during which taxes were imposed for the use of the defunct Board.

The city having herself provoked the appointment of this receiver is not in a position to say that the litigation has terminated and that a receiver is not necessary to wind up the litigation; and since there is a receiver, it is obvious that he should have all necessary powers to reduce to possession the assets that the receiver-ship may be entitled to claim and receive. The city cannot deny that there are such assets, nor that there are debts of the defunct Board still outstanding, nor that she is liable to an accounting for the taxes in question. Because, heretofore an amount has been recovered and distributed, is no reason why all other amounts that may be due should not be in like manner recovered and distributed. We think, therefore, that the enlarged powers were properly granted.

Warrants of the defunct Board are not limited for their payment to the taxes of the years during which they were issued; but may come against the taxes of any of the years during which taxes were imposed; in other words, the taxes of the several years from 1869 to 1876, inclusive, constitute one fund out of which the warrants of the defunct Board are payable. This point was settled by the decision of this court in the cases of Fischer *vs.* School Directors, 44th Annual 187; 45 Ann. 342.

The powers of a receiver may be enlarged on his own application or even on the court's own motion. A. & E. Ency., Vol. 20, p. 88.

It is therefore ordered, adjudged and decreed that the judgment herein be affirmed at the cost of the appellant.

238 *Judgment.*

Extract from the Judgment Book.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, New Orleans Division, November Term, 1902.

NEW ORLEANS, MONDAY, *February 9th*, 1903.

Court met pursuant to adjournment.
Present: Hon. Charles Parlange, District Judge.

11899.

R. F. HARRISON, Receiver,
vs.
THE CITY OF NEW ORLEANS.

Considering the verdict of the jury herein and in accordance therewith, it is ordered, adjudged and decreed that the exceptions of the City of New Orleans to the supplemental and amended petition be sustained and that this suit be dismissed with costs, without prejudice.

Judgment rendered, February 9, 1903.
Judgment signed March 13, 1903.
(Signed) CHARLES PARLANGE, *Judge.*

Reasons of the Court for Directing a Verdict for the Defendant and Exceptor and for Sustaining the Exceptions and Dismissing the Suit Without Prejudice.

PARLANGE, *District Judge:*

The exception to the supplemental petition of Louis A. Hubert, Receiver, is virtually founded on two grounds, viz:

First. That this Court has no jurisdiction because the parties on both sides are citizens of Louisiana.

239 Second. That Hubert, the Receiver, is not authorized to bring the suit.

It was conceded that the parties are citizens of Louisiana, and there being no conflict of evidence, cross motions to direct a verdict were made, and the Court directed a verdict in favor of the exceptor, the City of New Orleans, and against the plaintiff. In accordance with the verdict, the Court has sustained the exceptions and dismissed the suit without prejudice.

I am clearly of the opinion that as Hubert, the present receiver, is a citizen of Louisiana, he cannot prosecute the suit against the City of New Orleans, which is also a citizen of Louisiana. Harrison, the deceased receiver, was, it is true, a citizen of Mississippi, but the appointment under which he claimed the right to prosecute suit No. 11,899 in this Court, having been annulled by a decree of the Supreme Court of this State (43 La. Ann. 829) and his authoriza-

tion to prosecute that suit in this court having also been annulled, it is clear to me that Hubert can claim no standing in this case because of the citizenship of Harrison. No benefit can result to Hubert from a suit by Harrison, as receiver, under an unlawful appointment. That the counsel who brought suit No. 11,899 were convinced that it virtually went out of existence because of the decree of the Supreme Court of this State and the annullment of Harrison's authorization, seems to be plainly shown by the fact that for more than ten years no step was taken in the suit. The Supreme Court of this State virtually said concerning Harrison:

"The order enlarging the powers of the receiver in this case was practically a new and distinct appointment."

If the conferring of the enlarged powers on Harrison in 1890 constituted "a new and distinct appointment", the same result followed the appointment of Hubert in 1900, under the same
240 enlarged powers. The supplemental petition must be considered as a new suit brought by a receiver who is a citizen of Louisiana, and therefore, this Court has no jurisdiction in the matter.

I believe, as did the Supreme Court of this State, that the enlargement of Harrison's powers constituted a new and distinct appointment. But it should be noticed that even if that view is incorrect, the result, so far as the matter in hand is concerned, would be the same. For even if the order enlarging Harrison's powers did not constitute a new appointment, it was at all events his only source of authority for prosecuting suit No. 11,899, and the question would then be whether, Harrison's capacity and authorization to prosecute the suit having been annulled, Hubert can now, many years afterwards, claim a standing in this Court, because Harrison, at the time he brought the suit, was a citizen of Mississippi. Clearly, he cannot do so. It should be noticed that Harrison brought suit No. 11,899 before the enlargement of his powers.

I have considered carefully the cases cited by the receiver's counsel in support of the jurisdiction. In my opinion, none of them apply to the matter in hand. It may well be, under those authorities, that if Harrison had brought suit No. 11,899 by virtue of a lawful appointment as receiver and with due authorization from the Court which had appointed him, and the appointment and authorization had not been annulled, this Court would not be divested of its jurisdiction over the case by the mere fact of his death; and that Hubert, although a citizen of Louisiana, could prosecute the suit. But such a situation would be radically different from the one presented in this matter. The annullment of Harrison's second appointment and of his authorization to prosecute suit No. 11,899, left nothing of that suit to which Hubert can now lay claim to maintain the jurisdiction. If Harrison were alive, he could not prosecute this suit. The annullment of his appointment and
241 authorization operated virtually the dismissal of the suit, and it may be, though the point need not be decided, that Harrison's second appointment was void *ab initio*. It is obvious, of course, that Harrison's death could not put Hubert in a better position than Harrison's with regard to the litigation instituted by Harrison.

Even if Hubert were a citizen of another State than Louisiana and the Court had jurisdiction, the suit would have to be dismissed because Hubert has not been authorized to bring the suit. The authorization of Harrison concerning suit No. 11,899 was specially annulled by the State Court on January the 9th, 1891, and, besides, the annullment of Harrison's second appointment put an end to the power and authority to prosecute the suit. Therefore, Hubert can claim no authority to sue in this Court by transmission from Harrison. The only contention with regard to the question of Hubert's authorization, is that his power to sue in this Court results from the terms of his appointment. On January the 5th, 1900, he was appointed by the State Court "Receiver of the Board of Metropolitan Police to succeed R. F. Harrison, deceased." On November the 20th, 1900, his powers were enlarged by the State Court "so as to include all of the assets, claims and taxes owned and controlled by or due to the said Board of Metropolitan Police prior to 1879." Harrison was appointed receiver in 1877, and "authorized to demand and receive from J. C. Denis, Esq., administrator of finance of the City of New Orleans, or from said City, or any other person, any and all sums which may have been or may hereafter be collected or received for or on account of the Metropolitan Police tax for the years 1874, 1875 and 1876."

It is evidence to me that Hubert has not been authorized
242 to sue; and it would seem that the learned counsel who represented Harrison did not believe that Harrison could sue under the terms of his appointment, for, before suing in his behalf in the State Court and subsequently, in order that he might proceed with suit No. 11,899 in this Court, they sought and obtained the authorization of the State Court which had appointed Harrison.

"A receiver may not bring any suit without first obtaining leave to do so from the Court which appointed him. This rule is universal in the absence of statutory provisions changing it. It has become customary, in order to avoid the necessity of frequent applications for the Court to give the receiver general leave to bring suits. If such authority is not given in the order of appointment, it may be confirmed (conferred?) by a subsequent order." Am. & Eng. Ency. Law 1st Edn. Verbo "Receivers," Vol. 20, pages 229 and 230.

Also as to the necessity of general or special authorization and incidentally, of averment by a receiver of his authorization, see Gluck & Becker on Receivers, 146 and Notes.

The order of the State Court appointing Hubert and the subsequent order of the same Court enlarging his powers, do not refer in terms to the order appointing Harrison in 1877, but even if they had, Harrison was only authorized "to demand and receive" from any person the taxes of 1874, 1875 and 1876, then collected or afterwards to be collected. This gave him no power to sue and, as already stated, he was aware of the fact and sought and obtained the Court's authorization to bring the two suits which he instituted—one in the State Court and suit No. 11,899 in this Court. In any event, Harrison's first appointment did not refer to the assessments which are sued for by Hubert.

243 In Scriven *vs.* Clark, 48 Ga. 41, the order appointing the receiver recited:

"He is hereby ordered to collect immediately all of said property together and hold the same subject to the further order of the Court."

It was held that this conferred no authority to bring suit.

In the same case the Court said:

"The rule is perhaps an arbitrary one, but is, nevertheless, well settled, that a receiver has no right to sue without express authority from the chancellor; his general authority to collect and keep the assets is not sufficient to justify him in bringing an action. A receiver is at last only an officer of the Court, and the foundation of the rule probably is that it is always for the Court itself to determine whether it shall be dragged into litigation. At law, the party having the legal right to sue is the proper party, and if one comes suing for the property of another he must show, as part of his right to recover, the authority he has to come into Court of law asserting's another's right. We think this failure to show any authority to sue is fatal to the case of the plaintiff below."

The only case cited by plaintiff's counsel which, in my opinion, bears on the question of authorization is Helme *vs.* Littlejohn, 12 La. Ann. 298, decided by the Supreme Court of this State. With great respect for the opinion of that high tribunal, it may be said that the case seems to stand singly and alone. It was decided in 1857, at a time when the law of receiverships was almost unknown in Louisiana. It is but recently that legislation on the subject of receiverships has, for the first time, been enacted in Louisiana.

Under the circumstances, it seems to me that the case can-
244 not control as against the universal rule that receivers must be authorized to sue, either specially or generally.

245 P. XI.

Metropolitan Police Tax and Interest Collections.

Tax.

1869	Tax—Collections from 31 March, 1877, to 24 May, 1890, equals 6/19 of $8121.09, or.....	$2564.52
1870	Tax—Collections from 31 March, 1877, to 24 May, 1890, equals 2/7 of $16462.88, or.....	4703.68
1871	Tax—Collections from 31 March, 1877, to 24 May, 1890, equals 119/550 of $47074.06, or.	10185.11
1873	Tax—Collections from 31 March, 1877, to 24 May, 1890, equals 32/300 of $64915.05, or..	6924.27
1877	Tax—Collections from 22 March, 1877, to 31 March, 1877	44332.47
1877	Tax—Collections from 31 March, 1877, to 31 Jan., 1880	236655.03
1877	Tax—Collections from 31 Jan., 1880, to 2 July, 1880, equals 3/13 of $2205.02, or.....	509.85
1877	Tax—Collections from 5 July, 1880, to 24 May, 1890, equals 1/3 of $38454.03, or.....	12818.01

Interest.

1870	Int.—Collections from 31 March, 1877, to 24 May, 1890, equals 2/7 of $342.66, or.....	97.90
1871	Int.—Collections to 24 May, 1890, equals 119/550 of $93980.47, or.....	20333.95
1873	Int.—Collections to 24 May, 1890, equals 32/300 of $164599.18, or.....	17557.24
1874	Int.—Collections to 24 May, 1890, equals 89/500 of $107945.27, or.....	19214.25
1875	Int.—Collections to 24 May, 1890, equals 99/500 of $60655.94, or.....	12009.97
1876	Int.—Collections to 24 May, 1890, equals 42/150 of $33626.78, or.....	9415.50
1877	Int.—Collections from March 22, 1877 to 31 March, 1877, equals 1/5 of $2083.26, or...	416.65
1877	Int.—Collections from 31 March, 1877, to 24 May, 1890, equals 1/5 of $17468.46, or....	3493.69
		401232.09

246

Mr. Justice Provosty.

Monday, March 12th, 1906.

No. 15877.

L. A. HUBERT, Receiver,
vs.
CITY OF NEW ORLEANS.

Appeal from Civil District Court, Parish of Orleans—T. C. W. Ellis, Judge.

The plaintiff receiver was appointed at the request of the City of New Orleans for the purpose of receiving from her and distributing to the creditors of the late Metropolitan Police Board the funds derived by her from taxes which in obedience to the statute creating said Board, she had imposed for the use of said Board, and subsequently collected. A certain amount has heretofore been paid over by the city to the plaintiff receiver and distributed, and the present suit is for the remainder of the funds thus collected by the city. The amount thus due has been ascertained by experts from the books of the city, and there is no question as to the correctness of the figures; but the city makes several defences on other grounds.

The first of these defences is that the powers of the plaintiff receiver are restricted, by the order appointing him, to the taxes imposed for the years 1869 to 1876, inclusive, and that the suit is also for the taxes of 1877.

This defence is utterly without merit. The judgment fixing the powers of the receiver expressly includes the year 1877, and that judgment was affirmed without qualification by this court.

The second defence is *res judicata*, based on the decision of this court in the case of Harrison, Receiver, *vs.* City, 40 Ann. 509.

That suit was for the principal of the taxes collected for the years 1874, 5 and 6. The power of the receiver was then limited to those years, and he brought suit and recovered only for those years.

247 His powers were subsequently enlarged so as to include all the years during which the city, in obedience to statute, had imposed taxes for the use and benefit of the Police Board. The particular taxes claimed in that suit are not being claimed in the instant suit; hence there is no *res judicata*,—the thing claimed not being the same.

The next defence is the plea of payment. This defence is devoid even of color. In satisfaction of the apportionment of 1868 the city offered bonds to the Police Board. Having the right to demand cash, the Board refused to receive the bonds. Thereupon the city discounted her bonds to the amount of $805,635, at a loss of $204,288.11, in order to meet the obligation she was under of paying the Board in cash. It is this $204,288.11 thus lost in 1868 or 1869 that is now pleaded in payment of the plaintiff's claim.

The next defence is prescription of one year. The city has held these funds as trustee, and therefore cannot invoke prescription. St. Romes *vs.* Cotton Press, 20 Ann. 381; 30 Ann. 808; 1 Rob. 41; 12 Rob. 536; Aenaunt *vs.* R. R. Co., 41 Ann. 1020; 2 Ann. 927; 10 Ann. 580; 14 Ann. 238.

We do not think, however, that the city is accountable for more than she actually received. She made an agreement with the sheriff by which she on her part should not be called upon to pay any costs, and the sheriff, on his part, should retain all the interest he might collect on back taxes. This agreement has already had the sanction of this court. Harrison *vs.* City, 40 Ann. 509. All interest thus abandoned to the sheriff must therefore be deducted from the amount allowed plaintiff. This interest amounting to $12,607.05 must be deducted from the judgment.

Also the judgment allows legal interest from the date of the filing of a suit by Harrison, Receiver, the predecessor of the present receiver, against the city, in the Federal court, upon the same demand. Harrison was rightly held by that court to have been without

248 authority to make the demand; hence his demand must go for naught, and interest be computed from the demand made by the present suit.

It is therefore ordered, adjudged and decreed, that the sum of $12,607.05, representing the interest collected by the sheriff, and retained for his fees, be deducted from the judgment appeared from, and that interest run on said judgment from the date of the filing of the present suit instead of from the date fixed in said judgment, and that as thus amended said judgment be affirmed. The defendant to pay costs of lower court and the plaintiff those of appeal.

The judgment having become final the foregoing is a true copy of the original opinion and judgment rendered in the case of L. A. Hubert, Receiver *vs.* City of New Orleans, No. 15,877.

CLERK'S OFFICE, NEW ORLEANS, ——, 1906.

—— ——, *Clerk.*

(*Syllabus.*)

During the years 1869 to 1877 the city of New Orleans, in obedience to statute, imposed taxes for the use and benefit of the Board of Metropolitan Police. A large amount of these taxes, which had remained delinquent for each of the years, was collected by the city after the Board had gone out of existence. A receiver was appointed to receive from the city the amount thus collected and distribute same to the creditors of the Board. For some unknown reason, or possibly by mistake, the powers of the receiver were restricted to the years 1872, 1873 and 1874. He brought suit against the city and recovered and distributed to the creditors of the Board the amount of the taxes collected for those years. Later his powers were enlarged so as to embrace all the years for which taxes had been levied, and he then brought the present suit to recover the amount collected by the city on the taxes of these other years.

249 Held: the judgment in the former suit is not *res judicata* of the demand in the present suit, the thing claimed not being the same.

2. The city of New Orleans finding it advisable to make with the sheriff an arrangement by which she was not to be held for costs in any proceedings for the collection of back taxes and the sheriff should in consideration thereof retain any interest he might collect on such back taxes: held, she cannot be made to pay to the plaintiff receiver the interest thus retained by the sheriff.

[Endorsed:] 15877. Hubert.

250 PROCEEDINGS HAD IN THE SUPREME COURT OF THE STATE OF LOUISIANA.

Assignment of Errors.

Supreme Court of Louisiana.

No. 16402.

STATE *ex Rel.* L. A. HUBER, Receiver,

vs.

MAYOR & COUNCIL OF NEW ORLEANS.

To the Honorable the Supreme Court of Louisiana:

Louis A. Hubert, Receiver of the Board of Metropolitan Police, now assigns as error apparent on the face of the Record:

1st. That the Statutory obligation imposed upon the City of New Orleans, to levy, collect and pay over to the Board of Metropolitan

Police a special tax sufficient to pay and retire the apportionment fixed by the Board, constitutes a contract between the Board and the City, which is duly protected from being impaired by the Constitution of the United States, Article 1 Pary 10.

2nd. That the Board of Metropolitan Police, represented by this Receiver, entered into express and specific contracts with the policemen as shown by the record in Hubert *vs.* City No. 15,877 of this Hon. Court, and contracted an indebtedness of more than one hundred thousand dollars, payable out of the taxes levied and collected by the City of New Orleans, and these contracts are protected from impairment by the Constitution of the United States.

3rd. That the Constitution of Louisiana of 1879, Art. 209, repeated in the Constitution of Louisiana of 1898, Art. 232, Acts 1882 p. 53 and p. 177, limiting the rate of taxation impaired the obligation of this contract and Relator, appellant herein, is entitled to the levy of a special tax of one mill, notwithstanding the subsequent limit fixed by the State Constitutions as aforesaid, and by the statutes not specially mentioned herein.

Wherefore Relator, appellant herein, prays that the judg-
251 ment appealed from be reversed and that the writ of mandamus issued herein be made peremptory, and he prays for general relief, &c.

(Signed) CHAS. LOUQUE, *Att'y.*

New Orleans, March 9th, 1907.

(Endorsed:) No. 16,402. Supreme Court of Louisiana. State *ex rel.* L. A. Hubert *vs.* Mayor & Council of N. O. Assignment of Errors. Filed Mar. 9, 1907. (Signed) Paul E. Mortimer, Dep. Clerk.

Motion and Order to Use Record, No. 15877.

Supreme Court of Louisiana.

No. 16402.

STATE *ex Rel.* HUBERT, Rec.
vs.
MAYOR & COUNCIL OF NEW ORLEANS.

On motion of Charles Louque Att'y for the Receiver and on suggesting to the Court that the parties herein have entered into an agreement to use transcript 15,877 as a part of the transcript of appeal in this case.

It is ordered by the court that the parties herein be permitted to use transcript 15,877 of this Court as a part of this transcript.

(Endorsed:) No. 16,402. Supreme Court of Louisiana. State *ex rel.* Hubert *vs.* Mayor & Council of N. O. Motion to use transcript 15,877. Entered & Filed March 18th, 1907. (Signed) T. McC. Hyman, Clerk.

(*Continued.*)

(Extract from Minutes.)

NEW ORLEANS, MONDAY, *March 18th*, 1907.

The Court was duly opened pursuant to adjournment.

Present: Their Honors Joseph A. Breaux, Chief Justice; Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices.

252 No. 16402.

STATE *ex Rel.* L. A. HUBERT, Receiver,

vs.

MAYOR & COUNCIL OF THE CITY OF NEW ORLEANS.

This case was ordered by the Court to be continued with preference.

Called, Argued & Submitted.

(Extract from Minutes.)

NEW ORLEANS, MONDAY, *April 18th*, 1907.

The Court was duly opened pursuant to adjournment.

Present: Their Honors Joseph A. Breaux, Chief Justice; Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices.

No. 16402.

STATE *ex Rel.* L. A. HUBERT, Receiver,

vs.

MAYOR & COUNCIL OF THE CITY OF NEW ORLEANS.

This cause came on this day to be heard and was argued by counsel: Mr. Charles Louque, for plaintiff and appellant; Mr. Frank Barlett Thomas for the defendants and appellees. The court then took the cause under advisement upon the briefs for the respective parties in int-rest and the papers now on file.

Final Judgment.

(Extract from Minutes.)

NEW ORLEANS, MONDAY, *June 10th*, 1907.

The Court was duly opened pursuant to adjournment.

Present: Their Honors Joseph A. Breaux, Chief Justice; Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices.

His Honor Mr. Justice Monroe, Pronounced the opinion and judgment of the Court in the following case:

253 No. 16402.

STATE *ex Rel.* L. A. HUBERT, Receiver,

vs.

MAYOR & COUNCIL OF THE CITY OF NEW ORLEANS.

The Judgment appeal- from is, accordingly, affirmed.

Opinion of the Court.

254 Monroe, J.

MONDAY, *June 10th*, 1907.

No. 16402.

STATE *ex Rel.* L. A. HUBERT, Receiver,

vs.

MAYOR & COUNCIL OF THE CITY OF NEW ORLEANS.

Appeal from the Civil District Court, Parish of Orleans—St. Paul, J.

By Act 74 of 1868, and subsequent legislation, the General Assembly organized the parishes of Orleans, Jefferson and St. Bernard, including the City of New Orleans and several smaller municipalities, therein situated, into a "Metropolitan Police District," and, creating a "Board of Metropolitan Police," for the governance of the same, authorized the Board so created to apportion the expense of the system among the parishes and municipalities mentioned; required them to levy the taxes needed to meet their respective apportionments; and, under prescribed penalties, to turn over the proceeds of such levies (at one time) to the State Treasurer, for the use of the Police Board, and (later) to the Board itself. By Act 35 of 1877, the entire Metropolitan Police system was abolished and all the laws providing for its establishment and maintenance were repealed. There was, however, left a residuum in the shape of the uncollected taxes which had been levied under the legislation in question, for, and during, the years from 1868 to March 31, 1877, and which, until 1890, appear to have been paid, from time to time, into the City treasury; and, in the shape of an outstanding indebtedness, contracted by the Police Board. The particular case here presented arises out of the situation thus outlined and is as follows: Relator prays for a writ of mandamus to compel the City of New Orleans to levy a special tax for the payment of a judgment obtained by him in his capacity as Receiver of the Board of Metropolitan Police. He alleges that he has registered his judgment in the office of the City Comptroller, demanded payment thereof, and otherwise complied with the requirements of Act No. 5 of 1870 (Extra Sess.)
255 but without avail, and that no money has been, or will be, set aside for the payment of said judgment; that the Act mentioned prohibits the issuance of writs of *fieri facias* against the City, and, if it were otherwise, that the issuance of such a writ would be futile; "that the basis on which said judgment was rendered consisted of a contract and statutory obligation, imposed on the City of New Orleans, to levy, collect and pay over * * * a sum sufficient to pay the *quota* apportioned to said City under the act * * * creating the Board of Metropolitan Police, and amendatory acts. That said contract and statutory obligation existed during the years 1869 to 1877, inclusive, and that, the obligation thus continuing, the

fund which should have been provided constituted but one fund for the payment of the obligation thus created. That the maximum rate of taxation authorized by law, during said period of time, was not levied and the duty to levy enough taxes to satisfy such obligation formed part of said contract and statutory obligation and has not been performed, and relator is entitled to a special tax for the payment of said judgment. That the rate of taxation during the different years from 1868 to 1872 was unlimited, as regards the Board of Metropolitan Police * * * ; that, in the year 1872, by Act No. 73 * * * the levy of the City tax and the Police tax was limited to 1¼ per cent., as follows: "a tax for the current City expenses, including police, and exclusive of interest and schools. This tax not to exceed, in any one year, 1¼% upon the assessed value of real, personal and mixed property." That during the years 1873, 1874, 1875, 1876, 1877, the limit of taxation was not reached by a larger margin than the one mill tax which is necessary to pay and satisfy the judgment, herein rendered."

The City pleaded, *in limine*, the exception of no cause of action, and we are of opinion that it might, properly, have been maintained. It is true that the petition alleges that the basis of the judgment upon which relator sues "consisted of a contract and statutory obligation, imposed on the City of New Orleans, to levy, collect and pay over to the Board of Metropolitan Police" certain taxes which that Board was authorized to call for, but, contracts result from agreements,
256 express or implied, and not from proceedings *in invitum*, whether legislative or judicial, and the fact that the State organized a metropolitan police force and created a board for its governance, with authority to demand and receive from the City of New Orleans certain taxes, to be levied and collected by the latter, for the maintenance of such force, "imposed" no contract and no obligation upon the City which the Board so created could enforce, by any right of its own, or, for any use or purposes beyond that for which it was created, and, the State having abolished both the police and the board, the functions of the board ceased with its existence. The only standing, therefore, which relator could have for the purposes of this suit, would be as the representative of third persons with whom the defunct board, exercising the powers then vested in it, may have made contracts which depend upon the taxes to have been received from the City for their fulfillment, and there is no such ground of action stated in the petition.

Looking to the petition upon which the judgment sued on was rendered (and which was introduced on the trial of the instant case as part of relator's evidence), we find it alleged "that each of said parishes was, under the law creating the Metropolitan Police District, directed to levy a special tax for the maintenance of the Board of Metropolitan Police and payment of expenses; that, in accordance with, and in obedience to, the law on this subject, the City levied the special tax provided by law and has, now, or should have, in its treasury the amount above stated, being the collection of said special tax; that your petitioner annexes a detailed statement of the collections so made for the various years during which the tax was levied,

which amounts, though collected, were never paid to the Board of Metropolitan Police, nor to its representatives."

* * * * * * *

"That the Board of Metropolitan Police owed large amounts of money and the whole of said indebtedness, due by the City, is necessary to pay said indebtedness."

It will thus be seen that there is a conflict between the allegation and prayer of the petition herein filed, upon the one hand,
257 and the allegations of the petition upon which said judgment sued on is predicated, upon the other; since, in the one petition, it is alleged that "the rate of taxation, during the different years, from 1868 to 1872, was unlimited, as regards the Board of Metropolitan Police", and that "the duty to levy enough taxes to satisfy such obligation has not been performed and relator is entitled to a special tax" etc., and the, alleged, unused, or unexhausted, power of taxation, whether conferred by the Metropolitan police legislation or otherwise, is invoked; whereas, in the other, it was alleged that the taxes sued for had been levied and collected, and, upon the basis of said allegations, relator obtained judgment for ($136,082.62 less $12,607.05 or) $123,475.57, with certain interest, as for taxes which had been collected "in accordance with, and in obedience to the law" providing for the Metropolitan Police. Hubert *vs.* City of New Orleans, 116 La. 507.

In the brief presented on behalf of relator, for the purposes of the present application, his counsel say: "This is not a proceeding to compel the City of New Orleans to levy a special police tax; the City has actually levied and collected the tax. The tax levy having been made, in compliance with the statute, and having been collected by the City, gave rise to a cause of action in favor of the receiver to enforce its payment to the Board of Metropolitan Police. This cause of action, therefore, could not have arisen until the City had levied and collected the tax and refused to pay over the proceeds."

Assuming that the position that the relator now wishes to occupy is correctly stated in the foregoing excerpt, we take it to be conceded that the City has levied and collected all the taxes authorized or required by the Metropolitan Police legislation; and, further assuming that the relator represents the holders of the indebtedness (of the Police Board) referred to in the petition upon which he obtained his judgment (though it is not so alleged in the application now being considered,) the question still remains, does he disclose and make out a case which entitles him to a writ of mandamus to com-
258 pel the City to levy and collect an additional tax in order to make good its failure to pay over the tax already levied and collected? This question, we think, must be answered in the negative.

Act 74 of 1868, and subsequent legislation (particularly Acts 92 of 1869, 72 of 1870, 94 of 1870—extra session, 73 of 1872, and 16 of 1875), as has been stated, created a Metropolitan Police District of the three parishes of Orleans, Jefferson and St. Bernard and the municipal corporations therein situated, including the City of New

Orleans; established a State Board for the governance thereof; authorized the Board so established to make annual estimates of its expenses and to apportion the same among the parishes and municipalities constituting the district; and authorized and required the latter to raise, by taxation, the respective amounts so apportioned to them. When the act of 1868 was passed, thus requiring a special tax to be imposed upon the people of New Orleans for the maintenance of a police system, established without regard to their wishes and, professedly, for the benefit of the people of other jurisdictions as well as themselves, and the amount of which tax was to be determined by those at whose instance it was to be levied, the rate of taxation to which the City was limited, for all of its own purposes, including the public debt, schools and police, was 1.50%, and, of that rate, .85% was required for the bonded debt, leaving barely .65% for schools, police and other expenses, and (with the exception, perhaps, of an interval during the war) that appears to have been the situation from the passage of the act of 1856, amending the City Charter of 1852. (See Act 164 of 1856 and other acts of that year). The first call made for the newly created Metropolitan Police District, for the fiscal year of 1868-9, was for $877,695.00, for which, a tax of .75% was imposed, and, there having been also imposed an extra park tax, of 1¼ mills, the rate of taxation was increased from 1.50% for 1868, to 2.37½% for 1869; 2.62½% for 1870; 2.75% for 1872; and 3.00% for 1873. In the meanwhile, by Act No. 5 of 1870 (extra sess.), the courts were prohibited from issuing any
259 writs against the City, or its officers, calling for the payment of money, and creditors of the City who obtained judgments against it were required to register them in the office of the comptroller where payments were to await appropriations, to be made, in its annual budgets, by the City Council. At the same session, a new legislative charter was granted to the City which conferred and limited the taxing power as follows: "To levy an equal and uniform tax * * * but said tax, added to the consolidated loan tax and to the special tax for the payment of the annual interest on the bonds issued by the City for subscriptions to the capital stocks" (of certain railroads and the interest on certain bonds, other than consolidated bonds) "shall not, in the aggregate, be more than 1¾%, except in case of invasion or insurrection; provided, it be sufficient to pay the interest on the consolidated and railroad bonds issued by — City of New Orleans." (Act No. 7 of 1870, Ex. Sess., Sec 12 §20).

There was also passed at the extra session of 1870, an act which removed the Metropolitan Police system and the tax required for its maintenance entirely beyond the control of the Acts No. 5 and 7, thus referred to, by making it a misdemeanor, punishable by fine or imprisonment, for the treasurer of New Orleans to fail to pay over the proceeds of the police tax, and by declaring that all ordinances adopted by the City (or by the other members of the police district) should be void unless such tax should first be paid over. (Act 94 of 1870, Ex. Sess.). By Act 73 of 1872, the City was authorized to levy and collect a special tax for the Metropolitan

Police, for the year ending Sept. 30, 1872, not to exceed ½ of 1%, and it was further provided that, thereafter, the entire tax for the current city expenses, including police and exclusive of interest and schools "should, in no year, exceed 1¼%." By Act 16 of 1875, the apportionment for the Metropolitan Police was divided into 12 parts and the city treasurer was required to pay the tax, weekly as collected, to the Police Board (instead of to the State Treasurer) and was subjected to heavy penalties in the event of his failing to make the payment (of the 1/12) required in any one month; in addition to which, the Board was authorized to pledge the uncollected
260 tax bills, which were required to be turned over to it, and to collect the same without the intervention of the City. By Act 35 of 1877, as has been stated, the whole Metropolitan Police System was abolished and all the laws relating thereto were repealed.

Upon the trial of this case, in the district court, Mr. F. C. Font, the principal bookkeeper in the office of the city Comptroller, was sworn as a witness in behalf of the relator, and we make the following excerpts from his examination, towit: (Cross. Ex.) "Q. Have you had any occasion to look into the amount of taxation exercised by the City of New Orleans, b-*etween* the years including the year 1868, to the present time, with the idea in mind of ascertaining how much unauthorized (?) power of taxation was left in the City of New Orleans? A. Yes; I did figure in out at your request. * * * Q. Did you find, taking the statutory taxation, together with special taxation, that there was any unauthorized power (?) to tax left in the City during these years from 1868 to the present time? A. I did not. Q. In other words the City exhausted all the power of taxation it had? A. Yes, Sir." (Re-direct. Ex.) "I took five years of taxes, levied, and five of taxes, authorized. Q. If you say that the taxes were exhausted in those five years, you are mistaken in that fact. A. What exhausted the taxes of those five years was the subsequent levy. Q. By what. A. By ordinances, for instance, in 1880, there was a special judgment tax of .3210; in 1881, there was a special judgment tax of .2840. Q. You say that there was a special tax; what was that for? A. Judgments; it is called in the budget 'special judgment tax.' (By the Court) Q. Those extra levies were made after those five years entirely? A. Yes, Sir; afterwards. Q. Then go on and give each year, first, or give the total of the five years * * *. A. The taxes levied for five years amount to 5.1765%, of taxes levied, the authorization for those five years was 6.250%, leaving in use (unused) during those five years, 1.0735%. These five years were 1873, 1874, 1875, 1876 and 1870, and they were the only years in which the power of taxation was not exhausted. In subsequent years, beginning with 1880, 1881, 1882, 1885 and
261 1903, there was a levy of special judgment tax to the amount of 2.9067%; in other words, she is having a leeway of 1.0735. She has used 2.9067." The witness further testifies that he is unable to say, without examining the record, for what judgments the special tax referred to by him were levied. It is contended by counsel for relator that the judgments to which the witness refers may have been predicated upon obligations contracted during other years than those

for which the taxes for their payments are said to have been levied, and may, therefore, properly, have involved the exercise of an unused taxing power for such other years, but we are unable to reconcile this contention with the direct testimony of the relator's witness to the effect that, in one way or another, the taxing power vested in the City for the years from 1873 to 1877, inclusive, has been exhausted. Be that as it may; the power which relator invokes was conferred upon the City for purposes distinct and apart from that of maintaining the Metropolitan Police System, which was provided for by other legislation. The City was authorized and required to levy, for the maintenance of that system, the tax called for by the Police Board, and, having done so, it exhausted the power conferred on it for that purpose and cannot now be called on, in that behalf, to exercise a taxing power conferred on it for other and different purposes. Moreover, the witness states that the only years in which there was any unused taxing power were the years 1873, 1874, 1875, 1876 and 1877, and we are not informed that the judgment upon which relator sues is predicated upon any obligation arising in those years. *Non constat* but that the obligations of the Police Board, now outstanding, were contracted during some other years, when the taxing power of the City was exhausted without reference to special taxes subsequently levied, to pay judgments. If, however, relator represents any obligations contracted by the Board subsequently to March 17, 1870, there is no reason why, *quoad* any recourse (other than that provided by the Metropolitan Police legislation) to which he may be entitled, he should not be governed, as are other creditors of the City, by the provisions of Act No. 5 of 1870 (Extra Sess.), which Act, so far as we are advised, was a competent piece of legislation as to debts thereafter contracted by the City. To the
262 contrary; there is every reason why relator should be governed by that act, since the Police Board was authorized, by the special legislation to which we have referred, to enforce its demands, for the taxes collected under that legislation, by resort to the criminal statutes, and later was authorized to make the collections itself, whilst, for the ordinary creditors of the City, no such remedy was provided. Upon the other hand; if it be true, as counsel contend, that the cause of action upon which relator now sues "could not have arisen until the City had levied and collected the tax, and refused to pay over the proceeds", it was equally incumbent on relator to have fixed the date of such collection and failure to pay as at a time when there was some unused and unexhausted power of taxation to which there he could appeal. But we have no information on that subject beyond that conveyed by the allegations of the petition upon which relator obtained his judgment, to the effect that he was suing for taxes which the City had collected, between March 31, 1877, and 1890, or, had collected prior to 1880, or prior to 1890.

Again, if the obligation sued on is to be regarded as having arisen only when the City collected the taxes and failed to pay them over, and such collection and failure occurred after the passage of Act No 5 of 1870, we repeat that we know of no reason why the remedy of relator should not be governed by the provisions of that Act. But,

even if that were not the case, it is quite certain that the courts cannot supply relator with a remedy by ordering the City of New Orleans to exercise a power of taxation which it is not shown to have possessed (when the obligation sued on arose) and which has been left unused to the present time.

Judge Cooley, in referring to the use of the writ of mandamus, in matters of this kind, says: "The writ issues only when the party to whom it is directed is in default; it cannot confer upon him authority to do an act which could not voluntarily have been done; but it is a mandate to compel the exercise of an authority which the respondent already possessed, but which he has wrongfully refused or neglected to (exercise) perform. It is therefore a complete
263 answer to the application for the writ, in any case, that the respondent has no authority of law to do the act which the applicant would have performed." Cooley on Taxation (3rd Ed.) Vol. 2, p. 1350. And on p. 1361, of the same Vol. (note) we find the following:

"Under a statute authorizing cities to issue bonds for internal improvements and directing an annual tax levy to meet interest thereon, a City which each year, levied a tax sufficient, by commutation, to meet this interest on water works bonds, cannot be compelled by mandamus to make an additional levy to meet arrears due to unpaid taxes. Gay *vs.* New Whitecomb, (Wash) 67 Pac. 88."

The case of Fisk *vs.* Police Jury, 116 U. S. 132, upon which relator relies, is inapplicable. In that case, the relator had rendered services as district attorney for the parish of Jefferson at a time when the power of the parish to impose taxes for their compensation was limited to a certain rate, but was not exercised to the authorized limit, and it was held that the parish could be compelled to exercise its power within such limit for the purposes of his (Fisk's) claim, notwithstanding a subsequent change in the law whereby the limit was lowered. The same rule has frequently been applied by this court. Thus: Mr. Justice Fenner (in an opinion in which all the members of the court concurred), referring to the jurisprudence of the court upon the subject of the constitutional limitation of ten mills imposed upon the taxing power of parishes and municipal corporations, said: "We, therefore, held that the power of taxation possessed by the city was derived from two sources, viz: 1. From the state constitution, to the extent of ten mills, which was primarily applicable, so far as necessary, to the alimony of the city.

"2. From valid legislative authority, existing at the date of valid prior contracts, forming part thereof, irrepealable because protected by the constitution of the United States, and therefore, continuing to exist until the contracts shall be discharged * * *. We
264 held, further, however, that the constitutional legislation was absolutely destructive of the right of every creditor to exact a higher rate of taxation for the satisfaction of his debt, unless his right was *founded on an antecedent contract*, protected from impairment by the constitution of the United States." State *ex rel.* Wood *vs.* Board of Liquidation, 40 An. 410.

The rights of creditors of the City, claiming under Act 5 of 1870,

(extra Session), have also frequently been passed on by this court; the last expression upon the subject being to the effect that, under that act and under Act 32 of 1902, "judgments against the City of New Orleans for debts of former years, can be paid only after statutory, necessary and usual charges have been provided for, out of the revenues of each year." State *ex rel.* Benedict *vs.* City of New Orleans, 111 La. 374.

The judge *a quo* rejects relator's demand as in case of non suit. There is no prayer by the City for an amendment.

The judgment appealed from is, accordingly, affirmed.

265 *Petition for Rehearing.*

Supreme Court of Louisiana.

STATE *ex Rel.* LOUIS A. HUBERT
versus
MAYOR AND COUNCIL OF NEW ORLEANS.

Petition and Brief for Rehearing.

To the Honorable the Supreme Court of Louisiana:

The petition of Louis A. Hubert, herein acting in his capacity of the duly qualified receiver of the Board of Metropolitan Police, respectfully represents:

That there is error in the judgment herein rendered, refusing the mandamus prayed for for the following reasons:

1st. The petition for mandamus alleges: That the City of New Orleans was condemned to pay "relator in his official capacity $123,475.57, with 5 per cent. interest from April 5th, 1904; as the whole more fully appears by record No. 73173 of this (the Civil Dist.) Hon. Court." R. p. 1. Further on relator avers "that the basis on which said judgment was rendered consisted of a contract and statutory obligation." Two things joined by a conjunction first, the contract which was no other than the express contracts entered into by the Board of Metropolitan Police, and the po-
266 licemen, which contract was under the law made payable out of the police taxes to be levied by the City of New Orleans; and, second, the statutory obligation imposed by the law on the city to levy, collect and pay over to the Board the police tax necessary to pay their employés.

There never has arisen any misunderstanding between the attorneys of the litigants as to the meaning of these allegations.

Your Honors have not given to these allegations the meaning intended by the receiver. That meaning is fully explained in the assignment of errors filed in this Honorable Court long before the trial of this cause in this Court. The first assignment setting up the contract of agency which your Honors declared to be no contract because made *in invitum*.

The second assignment setting up: "That the Board of Metropolitan Police, represented by this receiver, entered into express and

specific contracts with the policemen, as shown by the record in Hubert *vs.* City, No. 15877 of this (Supreme) Honorable Court, and contracted an indebtedness of more than one hundred thousand dollars, payable out of the taxes levied and collected by the City of New Orleans, and these contracts are protected from impairment by the Constitution of the United States."

This assignment of error was not made to meet any deficiency in the pleadings, or to meet the exigencies of the decision of the lower Court, because the petition alleged a contract as well as the agency "imposed" on the City of New Orleans, and because the decision of the lower Court was simply based on the fact the police tax had been once levied and relator was not entitled to an-
267 other levy. Therefore the construction placed by this Court on this allegation is erroneous.

But suppose that we are completely in error as to our construction of this allegation and eliminating this allegation altogether, the petition would still show that the relator in his official capacity recovered judgment against the City of New Orleans, which entitles him to the levy of a special tax to pay the judgment "as the whole more fully appears by record No. 73173 of the Civil District Court."

We are therefore to judge the rights of relator to the levy of a special tax, by the cause of action as set forth and shown in that record, and not by mere allegations, which may be faulty, defective or erroneous. The record was alleged as showing the cause of action, and it was offered in evidence and is before this Honorable Court.

Your Honors can decide for yourselves what is the nature of the obligation upon which judgment was rendered in favor of the relator. Your Honors are to examine into the original cause of action to ascertain whether relator can claim under a contract possessing greater power than a mere law of the State which was enacted with a view to impair its obligations. So, therefore, both under the allegations of the petition and under the evidence before the Court, the question presented is, whether the claims for which relief is sought are contractual.

Your Honors were obliged to admit that the contracts entered into between the Board of Metropolitan Police and the policemen were entitled to the protection of the Constitution of the
268 United States and could not be impaired, and the only question now is whether the record before this Court contains this proof.

Glued to one of the pages of the case of Hubert, Receiver, *vs.* City of New Orleans, R., p. —, is the printed transcript of the case of Benjamin *vs.* City of New Orleans. In that case is found a report of Mr. Brice, Master in Chancery, showing the amount of indebtedness of the Board of Metropolitan Police and the name of each creditor, with the month and the year during which the indebtedness accrued. This evidence, which was received without objection and which was part of proceedings carried on contradictorily with the City of New Orleans, shows that the indebtedness was all contracted during the years 1874, 1875 and 1876, when the limit of taxation had not been reached.

There can be no doubt that this indebtedness is the foundation of all this litigation. What are the duties and powers of a receiver? Why is he appointed?

The duty of a receiver is to collect the assets of a defunct corporation and apply them to the liquidation of its debts. His duties cease when there are no more funds to collect or no more debts to pay. He does not collect assets for his own use. He has no interest whatever in the assets. He is not the mere representative of the defunct corporation; he represents the creditors, as well. He can institute revocatory actions and sue to annul acts of the corporation, for the benefit of the creditors; suits which the corporation itself, if not defunct, could not institute. He acts under the orders of the Court. He is the hand of the Court to collect
269 the assets due the defunct corporation and apply the proceeds thereof to the payment of its debts. His principal and only duty is to see that the debts are paid. Had there been no indebtedness of the Board of Metropolitan Police, the Court would never have appointed this receiver. Your Honors, therefore, fell into a great error when you decided that the receiver represented the Board and that all the rights of the Board ceased with the repeal of the law creating the Board of Metropolitan Police. The charter of a corporation can never be repealed so as to defeat the rights of its creditors.

Therefore, taking into consideration the whole of the proceedings in this cause, the institution of the suit for collection of the assets and the proceedings under this mandamus, which are nothing more than a continuation of the suit, have but one object in view, *i. e.*, the collection of the assets for the purpose of paying the debts. Considering further that the petition for mandamus does allege the recovery of the judgment and the right of relator to have it paid by the levy of a special tax, it is clear that your Honors erred in deciding that relator does not base his claim on the contractual obligations entered into by the Board of Metropolitan Police.

270 II.

We desire now to take direct issue with your Honors on the other proposition of law propounded in this case.

Your Honors decide "but contracts result from agreements, express or implied, and not from proceedings *in invitum*, whether legislative or judicial."

We claim that contracts arise very often from proceedings *in invitum*, and these contracts are treated by all Courts as valid. To illustrate, we will cite the case of a marriage which is of so much higher dignity than a mere moneyed contract that it is considered as a sacrament by the church. Where a woman has been taken by violence and has been forced to marry a man, but after the violence has ceased, she continues to cohabit with the man, the law will recognize this marriage as a valid and binding one. Again, take the case of a banker, who at the mouth of a pistol is forced to receive a deposit, and who, when the violence has ceased, takes the money deposited and places it in his vault with his other funds and uses the

funds in his business. Will not the Courts compel a restitution when the depositor calls for his deposit?

Let us suppose that in this case the City of New Orleans was forced to levy the tax; the same Metropolitan officers who are now clamoring for their money, by force of arms, compelled the City of New Orleans to levy the tax; compelled the City Treasurer to collect the tax; yet when the money was received in this violent manner, the city very quietly placed the funds thus received in the vaults of the City Treasury used it and are now holding on to the same with might and main, by setting up that they did not voluntarily receive the funds, instead of at the first oppor-
271 tunity to return the deposit so unwillingly received, and getting rid of this unwilling obligation. Why, the fact of trying to keep the deposit is a ratification of what has been done and is in glaring contradiction of the plea *in invitum*.

The defendant who sets up that the obligation "imposed" on him *in invitum*, assumes the burden of proof to show this fact. This record contains no evidence tending to show that the City of New Orleans unwillingly assumed to levy and collect the police tax. There is evidence that after collecting the police tax the city did place it to her credit with other taxes and that she now refuses to pay over the same. This proceeding for a mandamus is, we admit, as regards the city *in invitum*. It is carried on against her will and is intended to force her to pay. The report of the experts shows that this Police tax, was mixed with other funds.

The evidence of the experts who made the report of the taxes received by the city, the judgment of the Court, show that the city has been condemned to pay the following collections made for the years: 1869, $2,564.52; 1870, $4,703.68; 1870, int. $97.90; 1871, $10,185.11; 1871, int. $20,333.95; 1873, $6,924.27; 1873, int. $17,557.24; 1874, int. $19,214.25; 1875, int. $12,009.97; 1876, int. $9,415.50; 1877, $16,558.84, and int. $3,910.34.

See R., p. —.

There can be nothing inconsistent in the first suit of the receiver to make the city account for funds received by her and this suit to obtain a mandamus to collect the judgment.

272 Louis A. Hubert, the receiver, prays that a hearing of this cause be granted and petitioner prays for general relief, etc.

June 17th, 1907.

CHS. LOUQUE,
ROUSE & GRANT,
Of Counsel.

(Endorsed:) No. 16,402. Supreme Court of Louisiana. State *ex rel.* Louis A. Hubert *vs.* Mayor and Council of New Orleans. Petition and Brief for Rehearing. Filed June 17th, 1907. (Signed) T. McC. Hyman, Clerk.

Rehearing Refused.

(Extract from Minutes.)

NEW ORLEANS, FRIDAY, *June 21st*, 1907.

The Court was duly opened pursuant to adjournment. Present—Their Honors: Joseph A. Breaux, Chief Justice, Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Associate Justices.

No. 16402.

STATE *ex Rel.* LOUIS A. HUBERT
vs.
MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS.

By the COURT:

It is ordered that the rehearing applied for in this case be refused.

273 *Petition for Writ of Error.*

To the Honorable Joseph A. Breaux, Chief Justice of the Supreme Court of the State of Louisiana:

The petition of Louis A. Hubert, herein acting as the duly qualified Receiver of the Board of Metropolitan Police, respectfully represents:

That in the matter of the State *ex rel.* Hubert, Receiver *vs.* the Mayor and Council of the City of New Orleans a final judgment has been rendered by the Hon. the Supreme Court of Louisiana, the highest Court of this State, against your petitioner refusing the writ of Mandamus prayed for, which writ was for the levy of a special tax to pay the judgment obtained by petitioner in his official capacity, against the City of New Orleans, under No. 16,402 of the Supreme Court of Louisiana.

That in said proceedings for mandamus, was drawn in question the right claimed by petitioner to the levy of a special tax, to pay his judgment notwithstanding the limitation of taxation fixed by legislation, subsequent to the contractual obligation, on the ground that said legislation impaired the obligations of the contract averred in the petition; and that a manifest error hath happened, to the great damage of your petitioner, as appear more fully by his petition and by the assignment of errors addressed to the Supreme Court of the United States, which is hereto annexed and made a part of this petition.

Your petitioner, therefore prays that a writ of error be granted from the final judgment rendered by the Supreme Court of Louisiana to the Supreme Court of the United States, within thirty days from the filing of this petition, on petitioner giving bond, in such sum as may be fixed by your Honor, conditioned as the law directs

and petitioner prays that the Defendants and Respondents
274 be cited according to law, and petitioner prays for general relief &c.

(Signed) CHS. LOUQUE, *Atty.*

Order Granting Writ of Error.

Order.

Let as prayed for a writ of error be granted from the judgment rendered in this cause, returnable to the Honorable the Supreme Court of the United States, within thirty days from this date, on petitioner giving bond as the law directs in the sum of five hundred dollars.

New Orleans, July 17th, 1907.

(Signed) JOS. A. BREAUX,
Chief Justice Supreme Court of Louisiana.

(Endorsed:) No. 16,402. Supreme Court of Louisiana. State *ex rel.* Louis A. Hubert Receiver *vs.* Mayor & Council of New Orleans. Petition for writ of error. Filed July, 18, 1907. (Signed) T. McC. Hyman, Clerk.

Assignment of Errors.

To the Hon. the Supreme Court of the United States:

Louis A. Hubert herein acting as the duly qualified Receiver of the Board of Metropolitan Police, assigns as error apparent on the face of the Record:

1st. That the Statutory obligation imposed upon the City of New Orleans, to levy, collect and pay over to the Board of Metropolitan Police a special tax sufficient to pay and retire the apportionment fixed by the Board, constitutes a complete contract between the Board and the City which is protected from being impaired, by the Constitution of the United States; that at the time that said contract was created the limit of taxation had not been reached and
275 no subsequent limitation can impair the obligation of said statutory obligation.

2nd. That the Board of Metropolitan Police represented by this Receiver entered into express and specific contracts with the Policemen as shown by the record of Hubert, Receiver *vs.* the City of New Orleans, and contracted an indebtedness which will more than absorb the amount of the judgment herein rendered; that at the time that these contracts were entered into, the limit of taxation had not been reached, and the sebsequent constitutional and statutory limitation impaired the obligation of these contracts and are null and void, under the Constitution of the United States.

3rd. That the judgment rendered by the Hon. the Supreme Court of Louisiana refused to recognize that any contract right existed be-

tween the Board of Metropolitan Police and the City of New Orleans, on the ground that "contracts result from agreements express or implied and not from proceedings *in invitum*, whether legislative or judicial, and the fact that the State organized a Metropolitan Police force and created a board for its government, with authority to demand and receive from the City of New Orleans certain taxes, to be levied and collected by the latter, for the maintainance of the force, "imposed" no contract and no obligation on the City, which the Board could inforce." Whereas, in truth and in law, the State of Louisiana could and did impose on the City of New Orleans a trust which the City was bound to obey, and could and did create all the obligations resulting from that trust, which are protected from being impaired by the Constitution of the United States. That during the time of the existence of said trust the limit of taxation had not been reached, and the subsequent limit in the Constitutions of 1879 and 1898 impaired the obligations resulting from that trust and must be considered as not existing.

276 4th. That the judgment herein rendered by the Honorable the Supreme Court of Louisiana decided that Relator, the Receiver herein, did not set up the contract rights of the creditors of the Board represented by him, when in truth and in fact, such contract rights are specifically set out in the petition for Mandamus and proven by the evidence in the Record.

5th. That the Supreme Court of Louisiana erred in deciding that the functions of the Board of Metropolitan Police ceased with its existence, in 1877 when the law creating it was repealed; the truth is that so far as the indebtedness of the Board was concerned, to all intents and purposes, the Receiver represents the Board and the repeal of the law creating the Board and the various laws regulating the Metropolitan Police could not impair the obligations of the contracts previously existing, whether statutory, as creating the trust or expressly made by the Board with its creditors.

6th. That the Hon. the Supreme Court of Louisiana decided that the Police tax having been once levied, and collected, but retained by the City was a sufficient reason for not levying a special tax to pay the judgment rendered against her; whereas in truth the Record shows that the City of New Orleans voluntarily collected said Police tax, mixed it with its own funds, used it without distinction with her other funds, for its own municipal purposes, and such action created an obligation on her part to refund the money coming within the purview of the Constitution of the United States which could not be impaired by subsequent legislation.

7th. That the Supreme Court erred in deciding that there was a conflict and contradiction between a petition for an account and on which judgment was recovered by the Receiver against the City and the petition for a mandamus; the truth is that in the first 277 case the Receiver recovered judgment for money had and received by the Trustee, and in the last case the Receiver sought to enforce the collection of the judgment so obtained, by averring and claiming the protection of the Constitution of the United States.

8th. That the Supreme Court erred in deciding that Act 5 of

1870 conflicts with the right of Relator to the levy of a special tax, but the existence of said act does not so conflict. That the Supreme Court has so decided on previous occasions.

9th. That the Supreme Court erred in deciding that Act 5 of 1870 prohibits the issuance of a mandamus to levy a tax to pay a judgment, when in truth, the act has no reference to a proceeding to enforce the levy of a special tax;

10th. That the Court erred in deciding that the subsequent levy of special taxes, made by the Council to pay other judgment creditors, could deprive Relator of his right and remedy.

11th. That the Court erred in deciding that there was no proof for what years the contracts, forming the basis of the judgments, were made, when in truth the record shows that the City is indebted for taxes collected for every year from 1869 to 1877 inclusive, and the contractual indebtedness of the Board was for the years 1868 to 1876 inclusive.

12th. That the Court erred in deciding that the date of the Collection by the City which gave rise to the cause of action was to be considered as fixing Relator's right to a special tax; when in truth, the date when the obligation was created is the date by which Relator's rights to the special tax are to be ascertained.

Wherefore, Relator L. A. Hubert, Receiver, prays that the judgment aforesaid may be reversed and annulled, and that judgment be rendered herein, making the Mandamus prayed for peremptory, as prayed for in the original petition, and with all costs of suit.

278 (Signed) CHAS. LOUQUE,
Of Counsel.

(Endorsed:) No. 16,402. Supreme Court of the United States. State *ex rel.* Louis A. Hubert Receiver *vs.* Mayor and Council of the City of New Orleans. Assignment of Errors. Filed July 18th, 1907. (Signed) T. McC. Hyman, Clerk.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the State of Louisiana *ex rel.* L. A. Hubert Receiver and the Mayor and Council of the City of New Orleans No. 16,402 of the Docket of said Court, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such

their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or
279 commission a manifest error hath happened to the great damage of the said L. A. Hubert Receiver, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 8 day of July, in the year of our Lord one thousand nine hundred and seven.

(Signed) H. J. CARTER,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by
(Signed) JOSEPH A. BREAUX,
Chief Justice.

(Endorsed:) No. 16,402. Supreme Court of Louisiana. State of Louisiana *ex rel.* Louis A. Hubert, Receiver *versus* Mayor and Council of the City of New Orleans. (Writ of Error.) Copy of a Writ of Error lodged in the Clerk's Office of the Supreme Court of the State of Louisiana, in pursuance of the statute in such cases made and provided, this 18th day of July, one thousand nine hundred and seven. (Signed) Chas. Louque, Attorney for Plaintiff in Error. Filed July 18th, 1907. (Signed) T. McC. Hyman, Clerk.

280 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the State of Louisiana *ex rel.* L. A. Hubert Receiver, and the Mayor and Council of the City of New Orleans No. 16402 of the Docket of said Court, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the

validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or
281 commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said L. A. Hubert Receiver as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf; do command you, if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 8 day of July, in the year of our Lord one thousand nine hundred and seven.

H. J. CARTER,
Clerk of the Circuit Court of the United States
for the Eastern District of Louisiana.

Allowed by
JOS. A. BREAUX,
Chief Justice.

[Endorsed:] No. 16402. Supreme Court of Louisiana State of Louisiana *ex rel.* Louis A. Hubert, Receiver, *versus* Mayor and Council of the City of New Orleans. Writ of Error. Chs. Louque, Att'y for Pl'ff in error. Filed July 18, 1907. T. McC. Hyman, Clerk.

282 *Bond for Writ of Error.*

Supreme Court of the State of Louisiana.

No. 16402.

LOUIS A. HUBERT, Receiver of the Board of Metropolitan Police,
vs.
THE MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS.

Know all men by these presents, that we, Louis A. Hubert, Receiver of the Board of Metropolitan Police, and James A. Brennan of the City of New Orleans are held and firmly bound unto The Mayor and Council of the City of New Orleans, in the sum of Five

Hundred Dollars, to be paid to the said Mayor and Council of the City of New Orleans, or their successors in office. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 13th day of July, 1907.

Whereas, the above named Louis A. Hubert, Receiver of the Board of Metropolitan Police hath prosecuted a writ of error to the Supreme Court of the United States from the Supreme Court of the State of Louisiana, to reverse the judgment rendered in the above entitled action, by the Supreme Court of Louisiana.

Now, therefore, the condition of this obligation is such, that if the above named Louis A. Hubert, Receiver of the Board of Metropolitan Police shall prosecute his said writ of error to effect, and answer all costs, if he shall fail to make good his plea; then this obligation shall be void; otherwise to remain in full force and virtue.

283 (Signed) L. A. HUBERT,
Receiver Board of Metropolitan Police.
(Signed) JAS. A. BRENNAN.

Sealed and delivered in presence of
(Signed) CHS. LOUQUE.

STATE OF LOUISIANA, *City of New Orleans:*

Before me the undersigned authority personally came and appeared James A. Brennan, of New Orleans, who after being duly sworn says that after all his debts and liabilities — paid he is fully worth the sum of Five Hundred Dollars.

(Signed) JAMES A. BRENNAN.

Sworn to and subscribed before me this 13th day of July, 1907.
[SEAL.] (Signed) JOHN WAGNER,
Not. Pub.

Bond approved.
(Signed) JOS. A. BREAUX,
Chief Justice.

(Endorsed:) No. 16,402. Supreme Court of Louisiana. State of Louisiana *ex rel.* Louis A. Hubert, Receiver, *vs.* Mayor and Council of the City of New Orleans. Bond for writ of Error. Filed July 18, 1907. (Signed) T. McC. Hyman, Clerk.

284 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing Two hundred and eighty-three pages contain a full true and complete copy of the transcript of the proceedings had in the Civil District Court for the

Parish of Orleans in a certain suit wherein State of Louisiana *ex rel.* Louis A. Hubert, Receiver was plaintiff and Mayor and Council of the City of New Orleans, were defendants, and also of all the proceedings had in this Supreme Court on the appeal taken by said plaintiff which appeal is now on the files thereof under No. 16,402. Also true extracts from the Record of the proceedings had in the Civil District Court, Parish of Orleans, in a certain suit entitled Louis A. Hubert Receiver *vs.* City of New Orleans, which record is on the files of this court under No. 15,877.

In testimony whereof I have hereunto set my hand and affixed the seal of this Honorable Court at the City of New Orleans this third day of August Anno domini one thousand nine hundred and seven, and in the one hundred and thirty-second year of the Independence of the United States of America.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN, *Clerk.*

285 *Certificate of the Chief Justice.*

I, Joseph A. Breaux, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman is Clerk of the Supreme Court of the State of Louisiana; that the signature of Thomas McCabe Hyman to the foregoing certificate is in the proper handwriting of his the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal at the city of New Orleans, this the Third day of August, A. D., one thousand nine hundred and seven.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice.

286 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Martin Behrman, Mayor of the City of New Orleans, and the City Council of said City, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein Louis A. Hubert, Receiver of the Board of Metropolitan Police, relator, is plaintiff in error, and you are defendants in error to show cause, if any there be, why the

judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 17th day of July in the year of our Lord one thousand nine hundred and seven.

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] See Auburton. Supreme Court of the State of Louisiana. No. 16,402. State *ex rel.* L. A. Hubert, Receiver, *vs.* Mayor and Council of New Orleans. Citation.

Sheriff's Return.

Received Thursday, Jul- 18, 1907, and on the 19th day of July, 1907, I served a copy of the within Citation on The City of New Orleans defendant herein by personal service on Honorable Martin Behrman its Mayor.

____ ____,
Deputy Civil Sheriff of Orleans Parish.

Christian M. Goss, Deputy Civil Sheriff for the Parish of Orleans, State of Louisiana, being sworn, deposeth and says he made a personal service on Martin Behrman Mayor of the City of New Orleans defendant in the suit.

C. M. GOSS,
Deputy Sheriff of Orleans Parish.

Sworn to and subscribed before me, at the City of New Orleans, this 23rd day of July, A. D. 1907.

T. McC. HYMAN,
Clerk Supreme Court La.

And on the 22nd day of July, 1907, I served a copy of the within Citation on The City Council of New Orleans defendant herein by personal service on James McRacken its President.

C. M. GOSS,
Deputy Sheriff of Orleans Parish.

Christian M. Goss, Deputy Civil Sheriff for the Parish of Orleans, State of Louisiana, being sworn, deposeth and says he made a personal service on James McRacken President of The City Council of New Orleans defendant in the suit.

C. M. GOSS,
Deputy Sheriff of Orleans Parish.

181 581

Sworn to & subscribed before me, at the City of New Orleans, this 23rd day of July, A. D. 1907.

T. McC. HYMAN,
Clerk Supreme Court La.

Filed July 23, 1907.

JOHN A. KLOTZO,
Deputy Clerk.

Endorsed on cover: File No. 20,822. Louisiana supreme court. Term No. 156. The State of Louisiana *ex rel.* Louis A. Hubert, receiver, plaintiff in error, *vs.* The Mayor and Council of the City of New Orleans. Filed August 8, 1907. File No. 20,822.

FILED
APR 15 1909
JAMES H. McKENNEY

United States Supreme Court.

OCTOBER TERM, 1908.

No. [redacted]11.

STATE OF LOUISIANA, *EX REL.* LOUIS A. HUBERT, RECEIVER,

VERSUS

THE MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS.

BRIEF ON BEHALF OF RESPONDENTS, DEFENDANTS IN ERROR.

FRANK B. THOMAS,
Special Counsel for Defendants in Error.

J. O. HAUSER, "The Legal Printer," 620-22 Poydras Street, N. O.

United States Supreme Court.

OCTOBER TERM, 1908.

No. 156.

STATE OF LOUISIANA, *EX REL.* LOUIS A. HUBERT, RECEIVER,

VERSUS

THE MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS.

BRIEF ON BEHALF OF RESPONDENTS, DEFENDANTS IN ERROR.

The relator, a judgment creditor of the City of New Orleans, is now asking for a mandamus to compel the city to levy a special tax of one mill on all its assessable values for the purpose of paying his judgment, amounting to $123,475.57, with five per cent. interest from April 6, 1904.

This remedy having been refused him by the Supreme Court of Louisiana, the case is brought to this Court for review.

Relator alleges that his judgment is based upon a contract and statutory obligation, and that his rights thereunder have been impaired, in violation of Section 10 of Article 1 of the Constitution of the United States.

It may be pertinent at this time to give the history of the Metropolitan Police.

On September 14, 1868, the Legislature of Louisiana enacted Act No. 74 of that session, entitled "An act to establish a metropolitan police district, and to provide for the government thereof." The district was composed of the Parishes of Orleans, Jefferson and St. Bernard, and was called the "Metropolitan Police District of New Orleans, State of Louisiana." By the terms of this act the right to police itself was taken away from the City of New Orleans and turned over to a board consisting of five commissioners (none of whom had to be residents of New Orleans), who had exclusive and complete jurisdiction over the police force to be established under the act. The only manner in which the City of New Orleans was connected with that police force was that it had to pay the expenses of keeping it up. The act provided that the board should convene annually and make up a financial estimate of sums required for police expenses. After such estimate an apportionment was made, applicable to each of the cities and parishes in the district, in the

ratio of the number of police officers, etc., in such cities and parishes.

Section 29 of the act reads as follows:

> "That the Common Councils of the Cities of New Orleans, Jefferson, etc., are hereby respectively empowered and directed annually to order and cause to be raised and collected by the tax upon the estates, real and personal, subject to taxation, according to law, within said cities and towns, the sums of money, as aforesaid, annually estimated and apportioned as the share of such cities or parishes of the said total expense of the Metropolitan Police District."

It was thus the metropolitan police was forced on the City of New Orleans.

From 1869 to 1877, inclusive, the board made its estimate annually, and apportioned to the City of New Orleans its share of the police expenses, and yearly during that time the City of New Orleans included the police apportionment in its budget and levied and collected the tax.

One of the first acts of the Legislature of Louisiana that assembled in 1877 was to enact Act No. 35 of 1877, repealing Act No. 74 of 1868 and other metropolitan police acts, and abolishing the Board of Metropolitan Police.

That took place thirty-two years ago.

A long time subsequent to the repeal of Act No. 74 of 1868 a receiver was appointed to the Board of Metropolitan Police, with the consent of the city, and for the exclusive purpose of paying over to him delinquent po-

lice taxes of certain years, collected by the city, to be distributed among those entitled to them. This was done, and that should have ended the receivership.

The first receiver died, and the present receiver (the relator) was appointed about seven years ago.

He brought suit against the city for metropolitan police taxes claimed to have been collected by it, but never paid to the board, but which were diverted and used by the city for other purposes. He recovered judgment in that suit for the amount already stated.

He alleges in his application for a mandamus that his judgment is based on a contract and statutory obligation created by Act No. 74 of 1868, and that at the time that act was enacted the city's authority to levy taxes was unlimited; that the City of New Orleans has refused to pay his judgment for the reason that, at the time its payment was requested, there was no fund set apart out of which it could be paid; that he had no other remedy for the payment of his judgment except by means of the levy of a special tax.

The city answered by denying that the basis of the judgment was a contract and statutory obligation.

It alleged that the Courts could not create a power to levy a tax by mandamus, and that the city had exercised its full authority to tax, and was prohibited from exceeding its limitations.

That relator was, therefore, not entitled to a levy of a special tax, but that Act No. 5 of 1870 of the Louisiana

Legislature provided the manner in which his judgment would be paid in the orderly course of government.

That Act No. 5 of 1870 prohibited the issuance of any writs against the City of New Orleans the object of which shall be either directly or indirectly to enforce payment of money claimed to be due by the city to any person or corporation, etc.

The Supreme Court of Louisiana refused to levy the tax.

The Court's reasons for doing so, in brief, were:

First. That contracts were matters of agreement, and the fact that Act No. 74 of 1868 gave the Police Board the power to demand and receive from the city certain taxes imposed no contract and no obligation which the board could enforce by any right of its own or for any use or purpose beyond that for which it was created. The board being abolished, its functions ceased. The only standing which a receiver could have in a proceeding to compel the city to levy a special tax by way of accounting for police taxes collected by it, would be as the representative of third persons with whom the board may have made contracts which depend upon such collected taxes for their fulfillment, and no such ground of action is stated in his application.

Second. The city, having been specially authorized and required to levy and collect the tax by Act No. 74 of 1868, and having levied and collected such tax, has exhausted its taxing power for that purpose, and cannot be compelled, either by invoking the special power of tax-

ation so conferred or by invoking a power of taxation conferred for other and different purposes, to levy an additional tax in order to make good its failure to turn over the police tax so levied and collected.

THIRD. Unless a judgment against the City of New Orleans is shown to be predicated upon a contract which gives to the creditor the right to invoke some unused or unexhausted power of taxation, the only remedy for its enforcement is that provided by Act No. 5 of 1870.

The issue then presented to this Court may be stated as follows: Has any right which the Board of Metropolitan Police had under the terms of Act No. 74 of 1868, and which the relator has a right to enforce, been impaired in violation of the Federal Constitution?

Assuming that the judgment is more than an ordinary judgment, and that it should be paid at once, relator must find and exhibit to the Court some power of taxation conferred on the City of New Orleans, which has not been heretofore used by the city, upon which to predicate a levy of a tax by mandamus. Relator contends that there was no limitation upon the city's power of taxation previous to the year 1872.

Section 29 of Act 74 of 1868, already quoted, under which the city was directed to levy a tax to meet its apportionment of police expenses, was a limitation of its power to tax for police purposes; it was an express limitation and the true intention of the Legislature to limit the city's authority to tax for police purposes to the amount of its apportionment.

In the brief presented by relator to the Supreme Court of Louisiana his counsel say:

> "This is not a proceeding to compel the City of New Orleans to levy a special police tax. The city has actually levied and collected the tax. The tax levy, having been made in compliance with the statute, and having been collected by the city, gave rise to a cause of action in favor of the receiver to enforce its payment to the Board of Metropolitan Police."

We have here a remarkable situation. The City of New Orleans did what she was directed by law to do. She exhausted her power of taxation for police purposes by imposing and collecting the taxes required yearly by the Board of Metropolitan Police. In this way the City of New Orleans brought into existence yearly the funds required by law to be applied to police expenses, but the City of New Orleans diverted a part of these funds, with the result that there was a shortage of funds yearly to pay the police expenses of that year. Thus came into existence the deficit which is represented by the judgment of relator.

It is not shown when or for what year the shortage began. During all the years from 1869 to 1877 the board was in existence. There was ample legislation to protect and to segregate the police tax fund from the other revenues of the City of New Orleans. The powers of the Courts could have been invoked each year by the board or by any of its creditors of the fund, and writs of mandamus and injunction would have immediately saved the

fund from diversion to other purposes. So watchful of the Metropolitan Police fund was the Legislature that it passed Act 94 of 1870 (extra session), Section 3 of which reads as follows:

> "That it shall be the duty of the Treasurers of the Cities of New Orleans, Jefferson and Carrollton and the Treasurers of the Parish of Orleans, right bank; Parish of Jefferson, right bank; Parish of Jefferson, left bank, and the Parish of St. Bernard, to pay over to the State Treasurer all sums of money received on account of the sum due and owing to the Metropolitan Police Board, within five days after the receipt of the same; and, in the event of any of the aforesaid Treasurers failing to comply with the foregoing provisions, they shall be deemed guilty of misdemeanor in office and shall be liable to a fine not exceeding five hundred dollars or imprisonment not more than thirty days."

In spite of their right to avail themselves of civil, and even criminal, prosecution to protect the identity and to preserve intact the Metropolitan Police taxes, neither the board nor any of its creditors made any attempt from 1869 to 1877 to stay any dissipation or diversion of this particular fund. The city may have been guilty of a governmental wrong which could have been stopped at the time by simple process in the court at the instance of the Metropolitan Police Board or any of its creditors.

There is no escaping the fact that the tax was levied and so paid by the taxpayers of New Orleans. Must they pay again at the behest of a receiver recently appointed to a board which became defunct over thirty years ago?

Can the board or its creditors justly come before this Court and demand that the taxpayers of New Orleans be mulcted twice in order that the board or its creditors may be protected in rights, or, rather, remedies, which they lost through their own laches over thirty years ago?

We now contend that the relator must show that it is lawful for a municipality to impose and collect a tax twice for the same purpose. He dismissed this question in his brief with the mere statement that, as to him, the tax is never levied until he gets his money. He offers no line of authorities for this contention. If a municipality, acting under the law, imposes and collects a tax for police purposes as the City of New Orleans did from 1868 to 1877, the imposition and the collection of the tax became an accomplished fact, and the power and dominion of the municipality over the subject has been exhausted and has passed away. If the tax had never been imposed, or, if imposed, it had never been collected, there would still be something for the municipality to do *quoad* the tax, and the functions of the city in relation thereto would not have run out. The relator admits that the tax was levied, and that it was collected, but he complains that, after its collection, the city failed to pay it to the Board of Metropoltan Police. Granted. And what follows? Another tax? The power to tax having been exhausted by the act of imposing and collecting the Metropolitan Police tax, where does there exist in the City of New Orleans to-day any power to duplicate a power of taxation which she exhausted over thirty years ago?

The City of New Orleans having exhausted its power of taxation for Metropolitan Police purposes from 1868 to 1877, it is contended that the power of taxation for general purposes has not all been exhausted, and that there still exists sufficient unused power of taxation to pay relator's judgment.

Act 74 of 1868 required the city to levy a tax for police expenses. It was upon the faith of that particular tax that creditors dealt with the board. The limitations placed on the city's authority to tax was a part of their contract.

The city having levied the tax and exhausted the power so conferred on it, can the power conferred on it for other and special purposes be invoked at this time by the relator for police purposes? We think not. But should your Honors differ with us, we respectfully submit that the taxing power vested in the city for the years from 1873 to 1877, inclusive, has been exhausted.

The Supreme Court of Louisiana on this subject in deciding this case said:

> "By Act No. 73, page 124, of 1872, the city was authorized to levy a special tax for the Metropolitan Police for the year ending September 30, 1872, not to exceed one-half of one per cent., and it was further provided that thereafter the entire tax for the current city expenses, including police and exclusive of interest and schools, 'should in no year exceed one and one-quarter per cent.' By Act No. 16, page 35, of 1875, the apportionment for the Metropolitan Police was divided into twelve parts, and the City Treasurer required to pay the tax weekly, as collected, to the

police board (instead of to the State Treasurer), and was subjected to heavy penalties in the event of his failing to make the payment (of the one-half per cent.) required in any one month; in addition to which the board was authorized to pledge the uncollected tax bills which were required to be turned over to it, and to collect the same without the intervntion of the city. By Act No. 35 of 1877, as has been stated, the whole Metropolitan Police system was abolished and all the laws relating thereto were repealed.

"Upon the trial of this case in the District Court Mr. F. C. Font, the principal bookkeeper in the office of the City Comptroller, was sworn as a witness in behalf of the relator, and we make the following excerpts from his examination, to wit:

"Cross-examination:

" 'Q. Have you had any occasion to look into the amount of taxation exercised by the City of New Orleans between the years including 1868 to the present time, with the idea in mind of ascertaining how much authorized power of taxation was left in the City of New Orleans?

" 'A. Yes, I did figure it out at your request. * * *

" 'Q. Did you find, taking the statutory taxation together with special taxation, that there was any authorized power to tax left in the city during those years from 1868 to the present time?

" 'A. I did not.

" 'Q. In other words, the city exhausted all the power of taxation it had?

" 'A. Yes, sir.'

"Re-direct examination:

" 'I took five years of taxes levied and five of taxes authorized.

" 'Q. If you say that the taxes were exhausted in those five years, you are mistaken in that fact.

"'A. What exhausted the taxes of those five years was the subsequent levy.

"'Q. By what?

"'A. By ordinances. For instance, in 1880 there was a special judgment tax of .321; in 1881 there was a special judgment tax of .284.

"'Q. You say that there was a special tax. What was that tax for?

"'A. Judgments; it is called in the budget "special judgment tax."'

"By the Court:

"'Q. Those extra levees were made after those years entirely?

"'A. Yes, sir; afterwards.

"'Q. Then go on and give each year first, or give five years entirely?

"'A. The taxes levided for five years amounted to 5.1765 per cent. of taxes levied. The authorization for those five years was 6.25 per cent., having increased during those five years 1.0735 per cent. Those five years were 1873, 1874, 1875, 1876 and 1877, and they were the only years in which the power of taxation was not exhausted. In subsequent years, beginning with 1880, 1881, 1882, 1885 and 1903, there was a levy of special judgment tax to the amount of 2.9067 per cent.; in other words, she is having a leeway of 1.0735; she has used 2.9067.'"

Relator would like to have the Court presume that the taxes levied by order of Court were for the payment of judgments predicated upon obligations contracted during other years than those of 1873, 1874, 1875, 1876 and 1877, but there is no evidence in the record to justify the contention.

The relator takes the remarkable position that the burden of proving the negative is upon the city.

The record as made up shows that the relator in his petition charges that there exists an unexercised power to tax for police purposes. This the city denies, and is supported in that denial by the evidence. We contend that the thirty mills of tax imposed for the payment of judgments, as stated above, and which were in excess of the limit of taxation, must be imputed or attributed to the unused power of taxation invoked in any case, unless the relator, as part of the necessary proof of his case, shows that those surplus taxes are not to be attributed to the years of 1873, 1874, 1875, 1876 and 1877. In other words, the burden of proof is always upon the applicant for a mandamus to show that those surplus taxes do not apply to the years in which they claim there still exists an unused power of taxation.

There is nothing in the evidence to indicate what judgments served as the foundation for the special taxes, and nothing to show the cause of action upon which the judgments were rendered. Relator was offered the opportunity to show the nature of such judgments, but he failed to avail himself of the offer.

It is elemental that Courts cannot create power in municipalities to levy a tax. It must come from some valid legislative authority.

If the Court agrees with us that, *quoad* the power of taxation, the City of New Orleans exhausted her functions under the act of 1868 by actually levying and collecting the Metropolitan Police tax, and that the city has

exhausted all other power of taxation conferred on her by legislative authority, then Act 5 of 1870 does not impair any of relator's rights.

Relator is in the position of an ordinary judgment creditor of the City of New Orleans, whose claim is to be paid in due course out of the surplus revenues of the city.

He is entitled to no extraordinary relief.

Respectfully submitted,

FRANK B. THOMAS,

Special Counsel for Defendants in Error.

Office Supreme Court, U. S.
FILED.
MAR 22 1909
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No. [redacted]11.

THE STATE OF LOUISIANA *ex Rel.* LOUIS A. HUBERT, RECEIVER, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND CITY COUNCIL OF THE CITY OF NEW ORLEANS.

BRIEF FOR PLAINTIFF IN ERROR IN ANSWER TO BRIEF OF DEFENDANTS IN ERROR.

CHARLES LOUQUE,
Counsel for Plaintiff in Error.

(20,822.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 156.

STATE *EX REL.* L. A. HUBERT

v.

MAYOR AND COUNCIL OF NEW ORLEANS.

Brief for Plaintiff in Error in Answer to Brief of Defendants in Error.

Being of the opinion that the point that the City of New Orleans having once levied the police tax could not be called to levy and collect it either out of the margin for uncollected police tax or out of the margin of any other tax, was of no force, the undersigned although taking notice of the point did not make any special effort to disprove the proposition.

However, this point being one of the three relied upon in the brief of respondents to affirm the judgment of the Supreme Court of Louisiana, we deem it useful to show how utterly unfounded is this point.

We are not seeking to levy a police tax by these proceedings. We are seeking to collect a judgment; a final judgment; a judgment which contains no restriction how it is to be paid.

The cause of action forming the basis of the judgment has been completely merged in the judgment. The cause

of action is now extinguished to such an extent that it can never form the basis of another suit.

The judgment is a new debt, recognized by the court. All the peculiar qualities of the claim are merged in the judgment which stands on the same footing as all other judgments (Cyc., V. 23, p. 1109; Verbo Judgments, XIII, A. 2).

"One of the most important results of the merger of a cause of action in the judgment recovered upon it, is that thereby a new debt is created. Thenceforth the original claim or demand is extinguished or is transformed into a new obligation" (Black on Judgments, V. 2, § 677, p. 814, citing the case of Louisiana *v.* Mayor of N. O., &c., 109 U. S., 285).

Every judgment is for most purposes to be regarded as a new debt * * * though the cause of action may have arisen from a tort, the judgment is not, therefore, any the less a contract or in the nature of a contract. The tort merges in the judgment.

Freeman on Judgments, V. 1, § 217, p. 384.

In Louisiana the same doctrine prevails, and the obligation sued upon becomes merged in the judgment. No new suit can be instituted on the obligation when once transformed into a judgment.

The decisions on that subject are collected into a concrete form, expressed by Mr. Hennen in his Digest, V. 1; Verbo Judgment, I, No. 6.

This is so true that a judgment which has been rendered on a forfeiture of a bail bond will authorize the institution of a suit based on the judgment in a State different from the one in which the bail bond was forfeiture, thus extending to a certain extent the criminal jurisdiction of a State where the criminal laws can have no extra territorial jurisdiction.

Thus it is that the judgment herein sought to be enforced stands on the same footing as all other judgments.

The police tax was not exhausted, nor was the city tax. The City of New Orleans was authorized to levy 1¼ 0/00 taxes, city and police, without specification of how much of the one kind or the other kind.

See Act No. 73 of 1872, found in the original brief for relator, section 15, par. second, p. 76.

We do not deem it necessary to say any more on this subject.

We call the attention of this honorable court to the admission of record filed herein, showing that the assessment of the City of New Orleans for 1909 amounts approximately to $220,000,000, and that a levy of one mill tax will be necessary to satisfy the judgment of relator in this case.

Respectfully submitted,

CHS. LOUQUE,
Counsel for Plaintiff in Error.

WASHINGTON, *April* 15, 1909.

[redacted]

[redacted]

October Term, 1876.

No. 11.

THE STATE OF LOUISIANA, EX REL. [redacted]
FORBES, Relator,

Plaintiff in Error,

versus

THE MAYOR AND COUNCIL OF THE CITY OF
NEW ORLEANS,

Defendants in Error.

In Error to the Supreme Court of Louisiana.

Brief on Behalf of Plaintiff in Error.

[redacted]

United States Supreme Court.

OCTOBER TERM, 1908.

No. 156.

THE STATE OF LOUISIANA, *EX REL.* LOUIS A. HUBERT, RECEIVER,

PLAINTIFF IN ERROR,

VERSUS

THE MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS,

DEFENDANT IN ERROR.

In Error to the Supreme Court of Louisiana.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

The undersigned counsel desire to add a few suggestions in support of the relator's claim to the relief sought by this writ of error so ably argued by associate counsel.

The jurisdiction of this Court is found in the denial of the Court below to grant relief predicated upon the right claimed under the legislation of the State of Louisiana, to the levy of a tax to pay the obligations of the Board of Metropolitan Police arising out of contract.

Said board was a municipal corporation to which was delegated police government within a certain district, including the City of New Orleans. Said board had authority to estimate the expense of conducting its operations and to apportion to the several cities and parishes their respective shares thereof. It was authorized to appoint all officers and patrolmen employed by it, their salaries being fixed by law, and their tenure of office being during good behavior. The City of New Orleans and the municipal corporations within the police district were required to raise by taxation the amount required to pay their respective shares of the expenses of the board, and to collect and pay over the same.

The employment of officers and patrolmen and the performance of their duties established contractual relations with the board, whereby they became entitled to be paid their respective salaries as fixed by law, and to rely upon the levy and collection of taxes and payment thereof to the board, to enable it to pay them, there being no other mode provided by law for their payment.

They were the ultimate *cestuis que trustent,* and entitled to demand compliance with the law that the fruits of their contracts for service might be realized.

The repeal of all laws relating to the Metropolitan Police by Act No. 35 of the Louisiana Legislature, approved March 31, 1877, impaired the obligation of their contracts in violation of the Constitution.

The opinion and judgment of the Supreme Court of Louisiana gave effect to the repealing act, hence, this writ of error.

If it be contended that said Court has put its decision on other grounds, the analysis thereof by associate counsel in his brief shows that such other grounds are untenable, and that their real effect is to deny the claim of the relator to the protection of the Constitution.

It has been repeatedly held by this Court that, in reviewing the judgments of the Courts of a State, you are not limited to a mere consideration of the language used in the opinion, but may examine and determine what is the real substance and effect of the decision.

McCullough vs. Virginia, 172 U. S. 102.

If it be contended here, as it was in the Court below, that the Legislature had the right to abolish the Metropolitan Police Board, and remit the police power to the city, we admit it. But it could not destroy its obligations or deprive its creditors of the means of enforcing them, because the Constitution forbade it.

As this Court said in *Graham vs. Folsom*, 200 U. S. 248:

> "The power of the State to alter or destroy its corporations is not greater than the power of the State to repeal its legislation. Exercise of the latter

> power has been repeatedly held to be ineffectual to impair the obligations of a contract. The repeal of a law may be more readily undertaken than the abolition of townships or the change of their boundaries or the boundaries of counties. The latter may put on the form of a different purpose than the violation of a contract. But Courts cannot permit themselves to be deceived. They will not inquire too closely into the motives of the State, but they will not ignore the effect of its action."

In that case, as in this, a tax had been provided for, and there were officers whose duty it was to assess and collect it, and your Honors said:

> "A Court is within the line of its duty and powers when it directs those officers to the performance of their duty, and their objects upon which the tax can be laid."

In *Seibert vs. Lewis*, 122 U. S. 284, the relator's judgment, which he was seeking to collect, was founded upon municipal obligations issued under authority of an act of the Legislature of Missouri which authorized and required the levy and collection of a special tax to pay the principal and interest thereof; said levy and collection to be made in accordance with the then existing mode of levying and collecting county taxes. Different regulations for levying and collecting such county taxes were thereafter prescribed by law, under which the levy of the taxes to pay the relator's obligations was made unlawful, the previous law on the subject was repealed, and the levy thereof was refused, no legal equivalent for such levy being provided. And this Court, holding that it was a

material part of the contract that such creditor should always have the right to a special tax to be levied and collected in the same manner as the county taxes at the same time might be levied and collected, that the new provisions contained in the repealing act in that behalf were not a legal equivalent for the provisions of the former act, which, although repealed by the Legislature, was still in force in so far as the creditor was concerned, said:

> "It is well settled by the decisions of this Court that the remedy subsisting in a State, when and where the contract is made and to be performed, is a part of its obligations, and any subsequent law of the State which so affects that remedy as substantially to impair and lessen the value of the contract is forbidden by the Constitution, and is therefore void."

The creditors of the Police Board represented by the receiver were prevented by the action of the city from realizing the sum which would have otherwise come to them, derived from taxes laid pursuant to law, to meet the obligations of their contracts.

The city had authority to levy taxes for its alimony. Its wongful appropriation of the taxes levied and collected for the payment of the obligations of the Police Board, to such alimony, could not impair its liability in the premises. It is as if the taxes levied for the one purpose, and diverted to the other, had not been levied, and a court of equity will require a further levy to restore to the fund the amount diverted, which is as if it had not been collected.

This would be in no sense double taxation. The taxpayer has been benefited by the use of the money for public purposes, and a tax now levied to replace the money so used would add no greater burden than if the amount had been included in the tax levied for such public purposes.

The judgment of the Supreme Court of Louisiana should be reversed and a decree made in accordance with relator's petition.

Respectfully submitted,

J. D. ROUSE,

WILLIAM GRANT,

Of Counsel.

5

Office Supreme Court, U. S.
FILED.
APR 5 1909
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908

STATE OF LOUISIANA, EX. REL. LOUIS A. HUBERT, RECEIVER, &c.,

versus

THE MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS.

No. [redacted] 11.

BRIEF ON BEHALF OF RELATOR, PLAINTIFF IN ERROR.

CHAS. LOUQUE,
OF COUNSEL.

B. S. UPTON PRINTING CO., N. O

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ASSIGNMENT OF ERRORS.

To the Hon. the Supreme Court of the United States:

Louis A. Hubert, herein acting as the duly qualified Receiver of the Board of Metropolitan Police, assigns as error apparent on the face of the Record:

First. That the statutory obligation imposed upon the City of New Orleans, to levy, collect and pay over to the Board of Metropolitan Police a special tax sufficient to pay and retire the apportionment fixed by the Board, constitutes a complete contract between the Board and the City, which is protected from being impaired by the Constitution of the United States; that at the time that said contract was created the limit of taxation had not been reached and no subsequent limitation can impair the obligation of said statutory obligation.

Second. That the Board of Metropolitan Police represented by this Receiver entered into express and specific contracts with the policemen, as shown by the record of *Hubert, Receiver, vs. The City of New Orleans*, and contracted an indebtedness which will more than absorb the amount of the judgment herein rendered; that at the time that these contracts were entered into, the limit of taxation had not been reached and the subsequent constitutional and statutory limitation impaired the obligation of these contracts and are null and void, under the Constitution of the United States.

Third. That the judgment rendered by the Honorable the Supreme Court of Louisiana refused to recognize that any con-

tract right existed between the Board of Metropolitan Police and the City of New Orleans, on the ground that

> "contracts result from agreements express or implied and not from proceedings in *invitum* whether legislative or judicial and the fact that the State organized a Metropolitan Police force and created a board for its government, with authority to demand and receive from the City of New Orleans certain taxes to be levied and collected by the latter, for the maintenance of the force, 'imposed' no contract and no obligation on the City which the Board could enforce."

Whereas, in truth and in law, the State of Louisiana could and did impose on the City of New Orleans a trust which the City was bound to obey, and could and did create, all the obligations resulting from that trust, which are protected from being impaired by the Constitution of the United States. That during the time of the existence of said trust, the limit of taxation had not been reached, and the subsequent limit in the Constitutions of 1879 and 1898 impaired the obligations resulting from that trust and must be considered as not existing.

Fourth. That the judgment herein rendered by the Honorable the Supreme Court of Louisiana decided that relator, the Receiver herein, did not set up the contract rights of the creditors of the Board represented by him, when in truth and in fact, such contract rights are specifically set out in the petition for mandamus and proven by the evidence in the Record.

Fifth. That the Supreme Court of Louisiana erred in deciding that the functions of the Board of Metropolitan Police ceased with its existence in 1877 when the law creating it was repealed; the truth is, that so far as the indebtedness of the Board was concerned, to all intents and purposes, the Receiver represents the Board and the repeal of the law creating the Board and the various laws regulating the Metropolitan Police, could not

impair the obligations of the contracts previously existing, whether statutory, as creating the trust or expressly made by the Board with its creditors.

Sixth. That the Honorable the Supreme Court of Louisiana decided that the Police tax having been once levied and collected, but retained by the City, was a sufficient reason for not levying a special tax to pay the judgment rendered against her; whereas the Record shows that the City of New Orleans voluntarily collected said Police tax, mixed it with its own funds, used it without distinction with her other funds, for its municipal purposes and such action created an obligation on her part to refund the money, coming within the purview of the Constitution of the United States which could not be impaired by subsequent legislation.

Seventh. That the Supreme Court erred in deciding that there was a conflict and contradiction between a petition for an account and on which judgment was recovered by the Receiver against the City and the petition for a mandamus; the truth is that in the first case, the Receiver recovered judgment for money had and received by the Trustee and in the last case the Receiver sought to enforce the collection of the judgment so obtained, by averring and claiming the protection of the Constitution of the United States.

Eighth. That the Supreme Court erred in deciding that Act 5 of 1870 conflicts with the right of relator to the levy of a special tax, but the existence of said act does not so conflict. That the Supreme Court has so decided on previous occasions.

Ninth. That the Supreme Court erred in deciding that Act 5 of 1870 prohibits the issuance of a mandamus to levy a tax to pay a judgment, when in truth the act has no reference to a proceeding to enforce the levy of a special tax.

Tenth. That the Court erred in deciding that the subsequent levy of special taxes, made by the Council to pay other judgment creditors, could deprive relator of his right and remedy.

Eleventh. That the Court erred in deciding that there was no proof for what years the contracts, forming the basis of the judgments, were made, when in truth the Record shows, that the City is indebted for taxes collected for every year, from 1869 to 1877, inclusive, and the contractual indebtedness of the Board was for the years 1868 to 1876, inclusive.

Twelfth. That the Court erred in deciding that the date of the collection by the City which gave rise to the cause of action was to be considered as fixing relator's right to a special tax; when in truth the date when the obligation was created is the date by which relator's rights to the special tax are to be ascertained.

Wherefore relator, L. A. Hubert, Receiver, prays that the judgment aforesaid may be reversed and annulled, and that judgment be rendered herein, making the mandamus prayed for, peremptory, as prayed for in the original petition and with all costs of suit. R. 178 to 180.

SUPREME COURT OF THE UNITED STATES

STATE OF LOUISIANA, EX. REL. LOUIS A. HUBERT, RECEIVER, &c.,

versus

THE MAYOR AND COUNCIL OF THE CITY OF NEW ORLEANS.

No. 156.
October Term 1908

BRIEF ON BEHALF OF RELATOR, PLAINTIFF IN ERROR.

THIS CASE COMES FROM THE SUPREME COURT OF LOUISIANA.

The Writ of Error Was Granted By the Chief Justice of the State Court.

I.

The question presented by this record, is one where relator claims that the obligations arising from the contracts set up as the basis of the litigation have been impaired by subsequent State legislation and where the highest Court of the State has decided against his contention.

II.

The facts are as follows:

Relator, as Receiver of the Board of Metropolitan Police, recovered a judgment in the State Court, affirmed by the Supreme Court, against the City of New Orleans, for the sum of $123,475.57 with 5 per cent interest per annum from April 6th, 1904, and costs.

This judgment became final and executory and was duly recorded in the office of the City Comptroller. A demand was made on the City for its payment. For want of funds the demand was refused.

III.

The present proceeding, under review, is to obtain a writ of mandamus against the Mayor and Council of the City of New Orleans, to compel the levy of a special tax to pay this judgment. R. 1 to 3.

The respondents, in their return, admit that relator has obtained the judgment above mentioned. They also admit that the judgment is final and has been duly recorded in the City Comptroller's office. R. 5.

Respondents also admit that there are no funds to pay relator's judgment. R. 5.

The petition for a writ of mandamus alleges that under Act 5 of the extra session of the Legislature of 1870, the District Court is prohibited from issuing a writ of *fi. fa.* to enforce the payment of said judgment; and avers that even if said writ could be issued, the City of New Orleans has no money, nor property liable to seizure to satisfy said judgment and said writ of *fi. fa.* would be returned *nulla bona* by the sheriff. R. 2.

In their return

> "Respondents also admit that under Act 5 of the extra session of 1870, the District Court is prohibited from issuing a writ of *fieri facias* to enforce the payment of said judgment." R. 5.
>
> "Respondents deny that there will not be any funds available out of which the City Council can make any appropriation for the payment, and especially aver that under the terms of Act 5 of the extra session of 1870 the City Council in the past has paid all judgments registered with the City Comptroller, and that it is the purpose of respondents to comply with the terms of said act and that in due course relator's judgment can and will be paid by appropriations made for the collection of the taxes levied in the regular manner and order." R. 5 bottom, 6 top.

Thus the respondents deny that there will not be funds but they do not point out any; this is equivalent to an admission that there are none. They point out and fix no special time when the judgment will be paid. The respondents need never pay the judgment under the terms of Act 5 of 1870, as interpreted by the Louisiana Supreme Court.

The next allegation of the petition is:

> "That the basis on which said judgment was rendered consisted of a contract and statutory obligation imposed upon the City of New Orleans to levy, collect and pay over to the Board of Metropolitan Police a sum sufficient to pay the quota apportioned to said City under the Act of 1868 of the Legislature, creating the Board of Metropolitan Police, and amendatory acts;
>
> "That said contract and statutory obligation existed during the years 1869 to 1877 inclusive, and that the same constituted but one fund for the payment of the obligation thus created;

"That the maximum rate of taxation during said period was not levied and the duty to levy enough taxes to satisfy such obligation formed part of said contract."

It is averred that

"from 1868 to 1872 the rate was unlimited, as regards the Board of Metropolitan Police, the same being fixed by the Act of 1868, page 91, section 29."

Respondents in answer to the above allegations, say:

"Respondents deny that the basis on which said judgment was rendered consists of a contract and statutory obligation, BUT AVER that the suit was one for money claimed to be collected by the City and which it retained and for which relator claimed he had the right to distribute among the creditors of the Board of Metropolitan Police." R. 5. (See Appendix, page —)

The admission contained in the above averment, is conclusive that this cause is one of contract, that it is for money had and received for account of and for the benefit of the creditors of the Board of Metropolitan Police and which, in violation of the express trust created by the Statute, the City retained for its own use.

The admission is that the relator as Receiver, sued for and obtained the judgment against the City, for the benefit of the creditors of the Board of Metropolitan Police. Under this admission, if these creditors are contract creditors, as undoubtedly they are, and the indebtedness arising from this contract was made payable out of the Police taxes thus levied and collected by the City, then the obligations arising from these contracts, could not be impaired by subsequent legislation and the statute under which these obligations were created must remain in full force and effect until full satisfaction of the obligations created under it.

The Court will take judicial cognizance of the fact that the Constitution of the State of Louisiana of 1879 and 1898 limited the rate of taxation, to such an extent that unless the Court should recognize the contract right of which the unlimited rate of taxation formed a part and which could not be impaired by this legislation, relator will be without any remedy and unable to collect his judgment.

The answer to the last averments of the petition is that the Court is powerless to issue the writ of mandamus, under the terms of Act No. 5, extra session of 1870.

> "Respondents deny that the City has left any unexer-
> " cised authority of taxation during 1869 to 1877 inclusive,
> " for police purposes, and for further answer show that
> " under Act 74 of 1868 and amendatory acts that the
> " Board of Metropolitan Police prepared annually an
> " estimate of all its expenses for all purposes for each of
> " said years and notified the City of its apportionment,
> " and that upon receipt of such notice the City of New
> " Orleans levied a tax to meet the amount thereof. Section
> " 29 of said Act reading as follows: 'That the Common
> " Council of the City of New Orleans (Jefferson &c.,) are
> " respectively empowered and directed annually to order
> " and cause to be raised and collected by the tax upon the
> " estates, real and personal, subject to taxation according
> " to law within the said City, and towns, the sums of money
> " as aforesaid annually estimated and apportioned as the
> " share of such cities or parishes of the said total expenses
> " of the Metropolitan District.' Your respondents show
> " that said tax according to said law was so levied an-
> " nually and out of the funds so raised the City annually
> " appropriated in its budget the amount of its said appor-
> " tionment.
>
> " That its power to levy a tax for the years 1868 to 1872
> " was not unlimited *as the amount of said apportionment*
> " *was the limit and it was fully exercised* as aforesaid." R. 6.

The above admission of the defendants, is exceedingly important for the reason that this record is replete with evidence tending to show that the City of New Orleans DID NOT LEVY AND COLLECT ANY TAXES FOR THE YEAR 1868, but issued her bonds to the amount of $805,635 in lieu of the tax. This fact was known to the Supreme Court of Louisiana and was mentioned by the Court in the litigation, which resulted in the judgment obtained by relator against the City, which forms the basis of these proceedings for its collection. The Supreme Court of Louisiana said:

> " The next defence is the plea of payment. This defence
> " is devoid even of color. In satisfaction of the apportion-
> " ment of 1868, the City offered bonds to the Police Board.
> " Having the right to demand cash, the Board refused to
> " receive the bonds. Thereupon the City discounted her
> " bonds to the amount of $805,635.00 at a loss of $204,288.00
> " in order to meet the obligation she was under of paying
> " the Board in cash. It is this $204,288.00 thus lost in
> " 1868 or 1869 that is now pleaded in payment of plain-
> " tiff's claim." R. 162.

This same matter is set up by the City of New Orleans in a statement which accompanied its answer to the suit of Harrison, Receiver of the Board of Metropolitan Police, the predecessor of Louis A. Hubert, the present Receiver, who is the relator in this suit against the Mayor and Council of the City of New Orleans, where the Receiver claimed an account from the City of New Orleans for the Metropolitan Police taxes levied and collected by the City. R. 131 and 132.

The statement showed the levy of taxes for every year except 1868, when bonds were issued to pay the apportionment.

The City, as defendant, made the same judicial admission in the suit of Benjamin, a holder of Metropolitan Police warrants, seeking to recover from the City. R. 79-81.

The complete history of this transaction by which the City settled her apportionment without levying a tax is fully set forth in the report of A. G. Brice, Master, in the case of *Benjamin vs. the City*. R. 95-96. All this is corroborated by the report of the City Comptroller showing that for 1868 no Metropolitan Police tax was levied by the City of New Orleans. R. 23.

So that we have it in the form of a judicial admission by the City in two suits, involving the levy and collection of these same Metropolitan Police taxes. We have it in the judicial decision made by the Supreme Court of Louisiana in a case which is final between the parties to this litigation and we have the full history of this transaction by the Master in Chancery appointed to investigate this fund. R. 95-96.

Therefore, when the City sets up, as her defence, to these proceedings for a writ of mandamus to levy a special tax to pay the judgment against the City, that "said tax according to said law was so levied annually" and this proves not to be true, then we are entitled to our writ, notwithstanding the repeal of the Act of 1868, made in 1877, and notwithstanding the subsequent limitation of taxation contained in the Constitution of 1879 and 1898 and in the City Charter of 1896.

IV.

The case, on these issues, went to trial and the mandamus was refused by the lower Court.

Relator took an appeal to the Supreme Court of Louisiana.

As your Honors know, the law and equity practice are combined in one system in the courts of Louisiana and all cases are carried to the Supreme Court by appeal. That Court has the right to pass on questions of law and facts in all cases, except criminal ones.

V.

Several months before the trial of the case in the Supreme Court, *i. e.* on the 9th of March, 1907, relator filed an assignment of errors in the Supreme Court to the following effect:

> "Louis A. Hubert, Receiver of the Board of Metropolitan Police, now assigns as error apparent on the face of the record:
>
> "*First.* That the statutory obligation imposed upon the City of New Orleans, to levy, collect and pay over to the Board of Metropolitan Police a special tax sufficient to pay and retire the apportionment fixed by the Board, constitutes a contract between the Board and the City, which is duly protected from being impaired by the Constitution of the United States;
>
> "*Second.* That the Board of Metropolitan Police represented by this Receiver, entered into express and specific contracts with the Policemen, as shown by the Record in *Hubert vs. City*, No. 15,877 of this Honorable, Court and contracted an indebtedness of more than one hundred thousand dollars payable out of the taxes levied and collected by the City of New Orleans, and these contracts are protected from impairment by the Constitution of the United States;
>
> "*Third.* That the Constitution of Louisiana of 1879, Article 209 repeated in the Constitution of 1898, Article 232, Acts of 1882, page 52 and page 177, limiting the rate of taxation, impaired the obligations of this contract, and relator, appellant herein, is entitled to the levy of a special tax of one mill, notwithstanding the subsequent limit fixed by the State Constitution as aforesaid and by the statutes not specially mentioned herein.
>
> " Wherefore relator, appellant herein, prays that the " judgment appealed from be reversed and that the writ " of mandamus issued herein be made peremptory and he " prays for general relief." R. 163-164.

The Supreme Court of Louisiana nevertheless, on the 10th of June, 1907, three months thereafter, affirmed the judgment of the lower Court. R. 166 to 173.

A re-hearing was duly applied for, and refused. R. 173 to 176. Then the writ of error followed, which was granted by the Chief Justice of the Supreme Court of Louisiana.

VI.

(*a*) We will now review the decision of the Supreme Court of Louisiana, stating the various facts necessary for a complete understanding of this cause.

We have printed in the appendix the various Acts of the Legislature which have reference to this matter.

The return of the Mayor and Council have brought to your attention Act No. 74 of 1868, creating the Metropolitan Police District, out of the parishes of Orleans, Jefferson, St. Bernard and the City of New Orleans, and specially set up Section 29 of said act which empowered and directed these parishes and the City of New Orleans, respectively to order and cause to be raised and collected a tax to pay the total expenses of the Metropolitan District.

The City of New Orleans levied and collected a certain amount of this tax, but failed to pay it over. Judgment was obtained against the City of New Orleans, for the amount thus collected and not paid over. Relator contends that the statute of 1868 created an express trust and that this trust was a matter of contract which gave rise to obligations which are protected from being impaired by the Constitution of the United States. The creation of this trust by the Legislature which gave rise to obligations on the part of the trustee, were for the benefit of the *cestui que trust*, represented by relator.

(*b*) The answer of the Supreme Court to this clear and reasonable proposition was that:

> "contracts result from agreements express or implied and not from proceedings *in invitum*, whether legislative or judicial, and the fact that the State organized a metropolitan police force and created a board for its governance, with authority to demand and receive from the City of New Orleans certain taxes to be levied and collected by the latter for the maintenance of such force 'imposed' no contract and no obligation upon the City which the Board so created could enforce, by any right of its own or for any use or purposes beyond that for which it was created, and, the State having abolished both the police and the board, the functions of the board ceased with its existence. The only standing, therefore, which relator could have for the purposes of this suit would be as the representative of third persons with whom the defunct board, exercising the powers then vested in it, may have made contracts which depend upon the taxes to have been received from the City for their fulfillment, and there is no such ground of action stated in the petition." R. 167.

Here we have a direct issue. Relator maintains that the judgment which he seeks to collect by the levy of a tax, is based on a contract giving rise to obligations which can in no way be impaired by subsequent State legislation. The Supreme Court says that there is no such contract and no such obligation. That when the State abolished the Board of Metropolitan Police, its functions ceased and no obligation was impaired.

(*c*) Your Honors must bear in mind that we are seeking to collect a judgment. The question is whether the judgment we are seeking to collect is based on a contract. No new cause of action is stated or can be stated in the petition for a mandamus. The Court errs completely when it says that relator should have set up as a cause of action contracts entered into between the Board of Metropolitan Police and its creditors. No new cause

of action can arise here. We must go back and examine the basis and foundation of the judgment which is now final and executory, to decide what cause of action formed its basis.

(*d*) When it comes to a question of contract, the Supreme Court of the United States will examine that question for itself and will not be bound by the opinion of the State Court.

> 207, U. S. 416; *Sullivan vs. State of Texas;* citing 172, U. S. 102-109; 177, U. S. 66-67; 181, U. S. 142-147; 197, U. S. 544-570.

(*e*) The admission of the respondents, the Mayor and Council of New Orleans, in this case is

> "that the suit (in which the judgment was obtained) was one for money claimed to be collected by the City and which it retained and for which relator claimed he had the right to distribute among the creditors of the Board of Metropolitan Police." R. 6.

The judgment of the Supreme Court is therefore, at variance with the admission of the defendants.

How did the City come to collect this money is indicated by the Act of 1868, No. 74. The City of New Orleans is a municipal corporation created by the Legislature, which has the power to impose any duty and obligation upon her which it may choose, and the obligations when conferring co-relative rights on others, become contracts which must be preserved intact, until satisfied, and which are beyond the power of the State to impair.

The principal allegations of the petition on which the judgment against the City was obtained, are as follows:

> " The petition of Louis A. Hubert who resides in New Orleans, herein acting as the duly qualified Receiver of the Board of Metropolitan Police, respectfully represents:

" That the City is indebted unto your petitioner in his " official capacity in the sum of $411,884.89 and interest, " for this, to-wit:

" That the Board of Metropolitan Police was a corpora- " tion duly created by law, for the maintenance of order " in the Metropolitan District composed of the parishes of " Jefferson, St. Bernard and Orleans;

" That each of said parishes was under the law creating the " Metropolitan District, directed to levy a special tax for " the maintainance of the Board of Metropolitan Police " and payment of its expenses;

" That in accordance and in obedience to the laws on the " subject, the City of New Orleans levied the special taxes " provided by law and has now in its treasury, or should " have, the amount above stated, being the collection of " said special tax;* * *

" That the Board of Metropolitan Police owes large " amounts of money and the whole of said indebtedness " due by the City is necessary to pay said indebtedness. " R. 26-27."

The detailed statement of the taxes collected followed. R.28-29

(*f*) The answer of the City after reciting Act 74 of 1868, averred:

> "That respondent complied with all the duties imposed upon it, by the acts of the Legislature relative to said Board and levied said taxes and collected same to the best of its ability and the amount so collected paid over to the proper authorities." R. 29 bottom, 30 top.

The City therefore, did not repudiate the obligations imposed on her, but averred a compliance "to the best of its ability."

(*g*) The plaintiff offered in evidence the report of the Master in Chancery, A. G. Brice who was ordered by the Circuit Court of the United States for the Eastern District of Louisiana to investigate the indebtedness of the Board of Metropolitan Police.

He found that the Board had an outstanding indebtedness amounting to $123,963.06. R. 114.

This report commences at page 93 of the Record.

A detailed list of the creditors is found at pages 97 to 101.

The debts due are mostly for salaries of policemen. They were and are contract creditors.

Under these facts it is evident that the suit to collect the amount due by the City, was not brought for the benefit of the Board of Metropolitan Police. That board was created by the Legislature and could as a mere board be abolished at any time without violating any contract right, by substituting another agency to fulfill and satisfy its outstanding contracts. But when the Legislature gave to the board the right to create an indebtedness by the employment of policemen and other persons payable out of the taxes levied for the benefit of the board's employees and these persons had performed their services, the obligation to pay them was of such a nature that the Legislature could not, by abolishing the board which employed them, impair the obligations incurred by the board to pay them. The statute in creating the board provided a revenue out of which they should pay their expenses by the levy and collection of a tax to be made by the City of New Orleans and the other parishes composing the Metropolitan District.

(*h*) Therefore the Supreme Court of Louisiana erred in deciding that the Legislature could impose no contract on the City of New Orleans, and that it had the right to repeal the acts creating the Board of Metropolitan Police without impairing any obligation. The Supreme Court erred in deciding that no cause of action is set up for the benefit of the contract creditors of the Board of Metropolitan Police. We have shown that this is not a new suit, but simply one to enforce the collection of the

final judgment which was rendered for the benefit of the creditors of the Board of Metropolitan Police. This is a suit in the nature of an execution.

(*i*) It is hardly necessary to say that the Receiver is not in any way interested in this suit. That he is merely the officer of the Court acting for the purpose of realizing the assets of the defunct corporation for the purpose of distributing these assets among the creditors of the defunct corporation. He is the representative of all parties, as an officer of the Court.

> *High on Receivers*, p. 120;
> *Delaney vs. Mansfield*, 1 *Hog.* 234.

When the funds shall have been realized, they shall be, until distributed, in *custodia legis*.

It may not be out of place to inform the Court that the present Receiver, plaintiff in error herein, was so appointed on motion of the City of New Orleans. After his appointment, the Receiver discovered that his powers were limited and he moved the Court contradictorily with the City to have his powers increased. The lower Court granted his prayer and the City took an appeal. R. 154.

The Supreme Court, after giving a full history of the case, showing that from May, 1891, the matter remained in abeyance, said:

> "In this condition matters remained until December, 1899, when the City herself applied to the Court for the appointment of a successor to the late Receiver. In the application it was stated that the appointment was asked to be made 'for the purpose of closing this litigation.' Accordingly the present Receiver was appointed and the present application for enlarged powers is his first act towards closing the litigation. * * *

"The City having herself provoked the appointment of this Receiver is not in a position to say that the litigation has terminated and that a Receiver is not necessary to wind up the litigation; and since there is a Receiver, it is obvious that he should have all necessary powers to reduce to possession the assets that the receivership may be entitled to claim and receive. The City cannot deny that there are such assets *nor that there are debts* of the defunct Board still outstanding, nor that she is liable to an accounting for the taxes in question." R. 156.

This is a decision between the same parties to this litigation and it is final.

In applying for a re-hearing of this cause, we said:

"There can be no doubt that this indebtedness (of the Board) is the foundation of all this litigation. The duty of a Receiver is to collect the assets of a defunct corporation and apply them to the liquidation of its debts. His duties cease when there are no more funds to collect or no more debts to pay. He does not collect the assets for his own use. He has no interest whatever in the assets. He is not the mere representative of the defunct corporation; he represents the creditors as well. He can institute revocatory actions and sue to annul acts of the corporation, for the benefit of its creditors; suits which the corporation itself, if not defunct, could not institute. He acts under the orders of the Court. He is the hand of the Court to collect the assets due the defunct corporation and apply the proceeds thereof to the payment of its debts. His principal and only duty is to see that the debts are paid. Had there been no indebtedness of the Board of Metropolitan Police, the Court would never have appointed the Receiver. Your Honors therefore fell into a great error when you decided that the Receiver represented the Board and that all the rights of the Board ceased with the repeal of the law creating the Board of Metropolitan Police. The charter of a corporation can never be repealed so as to defeat the rights of its creditors.

"Therefore, taking into consideration the whole of the proceedings in this cause, the institution of the suit for collection of the assets and the proceedings under this mandamus, which are nothing more than a continuation of the suit and have but one object in view, *i. e.* the collection of the assets for the purpose of paying the debts; considering further that the petition for mandamus does allege the recovery of the judgment and the right of relator to have it paid by the levy of a special tax, it is clear that your Honors erred in deciding that relator does not base his claim on the contractual obligations entered into by the Board of Metropolitan Police." R. 175.

Thus it is that the question of contract has been raised and that the contract alleged has been impaired by subsequent legislation and that the decision of the highest Court of the State of Louisiana has been against this contention.

(*j*) The relation created by the statute of 1868, No. 74, is that of trustee as between the City of New Orleans and the Board of Metropolitan Police. It is an express trust which the City of New Orleans claims to have performed "to the best of its ability." This admission is contained in the answer to the suit for an account. R. 29 bottom, 30 top.

The willingness of the City to carry out the express trust is also to be found in the fact that the City passed the various ordinances to levy the Metropolitan Police tax as appears by R. 84-85-86-87-88-89-90.

The answer in this case admits that the City passed the collections to her own credit.

The books of the City Comptroller and the testimony of Mr. Chas. A. Aitkens establish the fact that "after January 31st, 1880, the Metropolitan tax was not kept in a separate account, but was credited with City taxes for 1877." R. 39.

Had the Board of Metropolitan Police not been abolished, the defendants and this Court are bound to admit that the Board would have a legal standing to obtain an accounting from the City. The Board being abolished, the rights and powers of the Board are conferred on the Receiver and he can stand in judgment and did so in his suit for an accounting. His right to do so was maintained by the Supreme Court. R. 154 to 156. We commend this decision to this Court. The reasoning there contained will throw considerable light on the relations of the parties.

Not only did the Supreme Court recognize that the powers of the Receiver should be enlarged but it recognized that a large amount of indebtedness existed, payable out of the taxes levied. The Court said:

> (*k*) "This is an appeal from an order granting enlarged powers to the Receiver heretofore appointed to have charge of the affairs of the defunct corporation known as the Board of Metropolitan Police.
>
> "In 1868 the Legislature created a Metropolitan Police District and placed the government and control thereof in a Board known as the Board of Metropolitan Police. Said act and the acts supplementary thereto required said Board to make annually an estimate of the expenses of maintaining a police force in said district, and to apportion the same to the several cities and parishes within said district; and paying the amounts thus apportioned to them. The City of New Orleans was one of the cities within said district. Under the apportionments made for the years 1869, 1870, 1871, 1872, 1873, 1874, 1875 and 1876 the amount payable by the City of New Orleans was approximately $800,000.00 per year. The said Board went out of existence in 1877 leaving a large outstanding indebtedness represented by warrants issued to policemen, etc., and large claims against the City for amounts due under

the yearly apportionments; which amounts had thus ermained unpaid because of the non-collection of *the taxes imposed to meet the payments.*

"The present suit of *State ex rel. A. Brittin vs. City of New Orleans,* was instituted in 1877. The relator (A. Brittin) alleging himself to be the holder of warrants issued by the said defunct Board for salaries of policemen for the month of November, 1876, to the amount of $9,842.65 and that the City had collected and had on hand $26,000.00 of the funds provided by law for paying said warrants, prayed for a mandamus to the City to pay the said debt out of the said fund. The order for mandamus was signed by the Judge, but was not further acted on. A month later, the same relator (A. Brittin) filed a supplemental petition in which he prayed for the appointment of a Receiver upon the following allegations, to-wit: That the City had collected the taxes imposed for the use of said defunct Board, and that there was no existing law by which she could pay same to the creditors of said defunct Board; that he was interested as a holder of certificates of indebtedness of the said Board in the distribution of the accrued and accruing collections made and being made of said taxes; that the said funds so received, exceeding $10,000.00, was claimed by divers parties and that in order to preserve the said fund for the interest of all parties concerned, and to insure the receipt of the taxes properly applicable to said funds and to make proper distribution thereof, a receiver should be appointed to take and receive the taxes collected as aforesaid for the years 1874, 1875 and 1876 and the taxes hereafter to be collected for the same years. The City of New Orleans informally consented to the appointment of the receiver and he was accordingly appointed.

"The prayer was that the receiver should be authorized to demand and receive the amounts collected on the taxes of the years 1874, 1875 and 1876, and the appointment was made according to the prayer. Why the powers of the re-

ceiver were thus restricted to three out of eight years for which taxes were imposed, does not appear.

"The receiver brought suit against the City of New Orleans on her liability to account for these taxes of 1874, 1875 and 1876 and recovered judgment for some $30,000.00.

"This amount he distributed *pro rata* to the creditors after satisfying privileged claims. Afterwards he applied to the Court for an enlargement of his powers so as to enable him to demand of the City the collection of the taxes of the other years. The Court made an order granting the application. Shortly afterwards the receiver died and a number of creditors applied for the appointment of a successor with the same enlarged powers, and the appointment was accordingly made.

"This granting of enlarged powers and this appointing of a successor to the late receiver had been done *ex parte*, without notice to the City of New Orleans. On this ground of want of notice, the City caused the order to be set aside. This was in May 1891. * * * We think that the enlarged powers were properly granted.

"Warrants of the defunct Board are not limited for their payment to the taxes of the years during which they were issued; but may come against the taxes of any of the years during which taxes were imposed. In other words, the taxes of the several years from 1869 to 1876 inclusive, constitute one fund out of which the warrants of the defunct Board are payable. This point was settled by the decision of this Court in the cases of *Fisher vs. School Directors*, 44 A, 187; 45 A. 342." R. 156.

This very important decision recognizes the right of the Receiver to collect the assets, by demanding an account from the City of New Orleans and his right to distribute the assets so collected among the creditors of the defunct Board. It recognizes that these creditors were persons employed as police-

men and were therefore contract creditors who were to be paid with the proceeds of the tax.

The ground now taken by the Supreme Court, that the Receiver had not alleged that he was representing the creditors of the Board in the present litigation, which is nothing more than a mode of executing the final judgment in his favor against the City of New Orleans, is therefore entirely at variance with the decision above quoted.

On the other hand, the statement made by the Supreme Court of Louisiana in the decision under review that contracts are not made "*in invitum*" is at variance with the facts of the case and with the admissions contained in the pleadings.

Respondents in this return

> "aver that the suit was for money claimed to be collected by the City and which it retained and for which relator claimed he had the right to distribute among the creditors of the Board of Metropolitan Police." R. 5.

Can your Honors believe that the City collected these taxes by force and against her will. That the ordinances passed to do so, were passed by force and that after she had so collected the taxes that she retained them for her own use by force? Is it not patent that the Receiver is trying his utmost to compel the City to pay the money so received and that the City is doing her utmost to retain these funds which she has used for her own benefit?

The reasoning of the Supreme Court of Louisiana is utterly at variance with the facts and the law of this case and results in a clear violation of the Constitution of the United States.

(*l*) In order to reason out that petitioner is not entitled to the levy of a special tax to pay his judgment, the Louisiana Supreme Court said that there was a conflict between the alle-

gations of the petition for an accounting in the case where the judgment was obtained, in which it was alleged that the City had levied the taxes required by law, whereas, in the petition for a mandamus the allegations are substantially that the limit of taxation had not been reached; that the "maximum" had not been levied.

Your Honors will perceive that there is no conflict in these allegations. In the one case, the allegations were made to obtain an accounting and the petitioner obtained judgment for the amount collected by the City, of the taxes levied, and in this case we simply alleged that the "maximum" of taxation had not been levied.

It would be too much of a repetition to copy all the allegations of the petitions in both cases. By keeping in mind the relief prayed for in each case, your Honors will conclude that there is no conflict existing. However, the first case having culminated in a judgment, the question is whether the present proceedings are in conflict with the previous judgment. The conflict of allegations in the petitions is entirely eliminated, even if there were any.

As we have already stated, this is not a new suit, based on a new cause of action. This proceeding for a mandamus is nothing more than an execution, in the form of a mandamus to collect the judgment already rendered.

Besides, we can see no reason why the Court should set up a defence to the issuance of this writ which is not contained in the return of the City and which the respondents did not raise. The question now before the Court is whether the limit of taxation had been reached in 1868, when the law giving rise to the obligation became in force. No such issue was before the Court

in the suit for an accounting. We have already seen that the limit had not been reached.

(*m*) Further analysing the judgment under review, we find it mentioned by the Court that in our brief we stated that the cause of action *for an accounting* could not have arisen until the City had levied and collected the tax and had refused to pay over the proceeds. This statement is seized upon by the Court to decide

> "that the *obligation* sued upon is to be regarded as *having arisen only when the City collected the taxes* and failed to pay them over, and such failure occurred after the passage of Act No. 5 of 1870." R. 171, bottom.

read in conjunction with that part of the decision contained in R. 168, middle.

The time when the cause of action arose is a very different thing from the time when the obligation was created.

In this case, the statute of 1868 gave rise to the obligation as stated by the Louisiana Court in the first ten lines of its opinion. R. 166. It was the statute of 1868, which authorized the City of New Orleans to levy and collect the Police tax, but it was not the statute of 1868 which gave rise to the cause of action. It was the default of the City in not complying with her obligations to pay what she had collected, an obligation imposed by the statute of 1868, which gave rise to the cause of action the purpose of which is to enforce the obligation created by the statute of 1868.

A contract of sale with full warranty is entered into in 1837, a breach of the warranty, by the eviction of the vendee occurs in 1870. The action arises in 1870, but the date of the obligation still remains as of 1837. So long as there was no breach of warranty, there was no cause of action. Therefore the date

when the cause of action arises, is not the date which gives rise to the obligation.

36 A. 688, *State ex rel. Carriere vs. City of New Orleans.*
17 Fed. Rep. 485, *U. S. vs. New Orleans.*

The statute of 1868 which imposed the obligations on the City of New Orleans to levy and collect a Police tax, did not and could not give rise to any cause of action. It was only when the City violated her obligations, by performing only a part of the obligation, to-wit: by levying and collecting the police tax, and refusing to perform the other part; that is, to pay over what she had collected, that a cause of action arose, on behalf of the *cestui que trust.* The rights of the parties cannot be governed by the law in existence at the time the obligation was violated, that is, at the time that the cause of action arises, but their rights are governed by the law in existence at the date when the obligation was created, when the contract was entered into.

In the Gaines cases your Honors decided that the rights of the parties were governed by the laws in existence at the date of the contract of sale and not by the laws existing at the date of the eviction. The Louisiana Supreme Court had previously maintained the same principle.

It is difficult to understand how the Supreme Court of Louisiana could commit such an egregious error.

32 A., 726; *Moore vs. City of New Orleans.*
34 A., 477; 37 A., 17.

(*n*) The Act of 1870, No. 5 of the extra session, is not applicable to this suit, as we will hereafter show. But, if the act be applicable to this cause, then the act impairs the obligations of the contract contained in the Act of 1868.

13 Otto 367; *Wolf vs. New Orleans.* 34 A. 481.

Furthermore, the act, if applicable, certainly deprived relator of his property without due process of law and left him completely without remedy. His judgment is rendered valueless and need never be paid if the City authorities are not willing to appropriate a sum sufficient to pay it. We will quote what this Court said in relation to this act, when we come to discuss it specially.

(*o*) After confusing the date of the obligation with the date of its violation, the Supreme Court of Louisiana decides that the limit of taxation was reached during the years 1868 to 1877.

Before entering into the discussion of this proposition, we must state, in justice to the Louisiana Supreme Court, that they themselves were not satisfied that the limit of taxation had been reached, because after discussing this proposition, they said:

> "Be that as it may, the power which relator invokes was conferred upon the City for purposes distinct and apart from that of maintaining the Metropolitan Police system, which was provided for by other legislation. The City was authorized and required to levy for the maintenance of that system, the tax called for by the Police Board, and having done so, it exhausted the power conferred on it for that purpose and cannot now be called on, in that behalf, to exercise a taxing power conferred on it for other and different purposes." R. 171, eighth line from top.

So that giving as their first reason for refusing to levy the tax, that the limit was reached, they gave as their second reason that the margin remaining on other taxes cannot be used to satisfy a judgment recovered for collection of Metropolitan taxes.

This reasoning would imply that if the power of taxation to levy Metropolitan taxes has not been exhausted, relator is entitled to the levy of the special tax.

We have previously shown and demonstrated in discussing the allegations of the petition for mandamus and of the return to the writ, that for the year 1868 the City had issued her bonds instead of levying the tax and to that extent, seven and a half mills, her power of taxation was unexhausted. The year 1868 is precisely the year when the obligation arose.

(*p*) We propose now to show that her power of taxation during the various years was not exhausted. Our demonstration is rendered that much easier and convincing from the fact, that on this point the previous decisions of the Louisiana Supreme Court are conclusive.

The following was decided in the year 1885:

> "The judgment was founded on a contract entered into, in 1872.
>
> "At the date of the contract, the City possessed a power of taxation for general expenses 'exclusive of interest and schools' of twelve and a half mills per annum. (See Act No. 73 of 1872, Sec. 15).
>
> 37 A. 17; *State ex rel. Marchand vs. New Orleans.*
>
> "From the foregoing statement, it appears, that to the extent necessary for the provision for payment of plaintiff's judgment, the City possesses a residuary power of taxation of two and a half mills, not exercised and which she refuses to exercise, the revenues from which would, under no circumstances, be applicable to the City's alimony, or indeed to any other purpose than that of satisfying relator's judgment and others standing in like case with it." *ib.* page 19.

This decision was re-affirmed in *State ex rel. Thorn vs. New Orleans.* 37 A. 530.

Act No. 73 of 1872, section 15, provides that the City shall proceed to levy: First, the City debt tax; second, "A tax for current City expenses, including police, and exclusive of interest

and schools. This tax shall in no year exceed one and one-quarter per cent upon the assessed value of real, personal and mixed property."

For the year 1873, according to the Comptroller's report, the City levied for current expenses 7.51 mills and for police 3.2 mills; making 10.71 mills; the limit was fixed at 12.5 mills, the unexhausted power of taxation was therefore 1.79 mills. R. 24.

For the year 1874, according to the same Comptroller's report, we find that the City levied for current expenses, 6.8 mills and for police 4.45 mills, making a total of 11 1–4 mills. The limit was fixed at 12 1–2 mills, therefore there was unexhausted 1 1–4 mills of the power of taxation. R. 24.

For the year 1875, the City levied for city expenses 5.1 mills and for police 4.95 mills, making a total of 10 1–2 mills; leaving her power of taxation unexhausted to the extent of 2 mills, inasmuch as the limit was 12 1–2 mills. R. 25.

For 1876, the City levied for current expenses 5.7 mills, and for police tax 4.2 mills, making a total of 9.9 mills when her limit was 12 1–2 mills; leaving unused 2.6 mills. R. 25.

For 1877 the levy was for current expenses, 6 mills; for police, 3 mills; making 9 mills. She could have levied 12 1–2 mills; therefore the margin of unexhausted taxation was 3 1–2 mills. R. 25.

The correctness of the above figures is borne out by a decision of the U. S. Circuit Court of Appeals for the Fifth Circuit, reported in the 118 Fed. Rep., page 815, where the Court said:

> "The undisputed evidence shows * * * that the City of New Orleans possesses unused taxing power of 5 mills for each of the years 1862 and 1863, and 1.79 mills for the year 1873; 1 1–4 mills for the year 1874 and 2 1–2 mills for the year 1879."

This decision was rendered in a case where a judgment creditor of the City sought and obtained the levy of a special tax to pay his judgment.

United States ex rel. Kilpatrick vs. Capdevielle et als, 118 Fed. Rep. 815.

The various taxes mentioned in the Comptroller's report found at pages 23, 24, 25 and 26 of the Record, must not be taken into computation in discussing the powers of taxation possessed by the municipality, because the Act of 1872, No. 73, section 15, limits the powers of taxation only as regard the City expenses and police, exclusive of interest and schools.

(*q*) Your Honors will please note that the taxes of 1868 were only collected in 1869; that the taxes of 1869 were only collected in 1870; that the taxes of 1870 were collected in 1871 and the taxes of 1871 were collected in 1872. During the year 1872 statute No. 73 was enacted, section 2 changing the name of the year for taxes so that although the taxes paid in 1872 were called taxes of 1871; the taxes of 1872 which were collected in 1873 were called taxes of 1873. This is the reason why in the Comptroller's report of the taxes levied in various years, the taxes of 1872 do not appear.

This statute explains why the levy of 1868 for police taxes, was replaced by an issue of City bonds since the levy of 1868 could not have been collected until 1869.

We now see that there existed a margin of taxation for the various years 1873 to 1877, and that this margin was constituted of City expense and Police tax, without reference to the proportion of each.

In its decision of this case, the Supreme Court declared that the rate of taxation was increased from 1 1-2 per cent to

2.37 1-2 mills for 1869; 2.625 mills for 1870 and 2.75 mills for 1872 to 3.0 mills for 1873. R. 169, middle.

There was no City tax for 1872, and the rates given by the Court are those mentioned by the City Comptroller, for not only the city expense and police taxes, but also for the interest on Railroad bonds, the million loan tax, and the Park tax; all of which were unlimited and are excluded from computation of the one and one-quarter per cent mentioned by the statute of 1872, No. 73, section 15 (copied above).

We again call your Honors' attention to the fact that the City debt tax, to be levied under the statute of 1872, is unlimited.

Considering that a tax of only one mill is necessary to satisfy the judgment herein rendered and that the Supreme Court of Louisiana decided that the indebtedness of the Metropolitan Police constituted but one fund payable out of any year in which the taxes were levied, we commend the following language which we have already quoted in a case between this relator and the City: "Warrants of the defunct Board are not limited for their payment to the taxes for the years during which they were issued but may come against the taxes of any of the years during which they were imposed." R. 156. (See the cases of *State ex rel. Brittin vs. New Orleans*, reported in 106 La. 469 and 109 La. 111.)

We conclude that relator has made a complete, certain and irrefutable case, entitling him to the levy of his tax.

We have quoted the reasoning of the Court to the effect that the City of New Orleans, having once levied the Metropolitan Police tax, although it has retained the tax for its own use and mixed it with its own funds, cannot be called upon to levy an

additional tax to pay the judgment which condemned her to repay what she has received.

We take issue with the Court on this proposition and we submit that so far as the relator is concerned unless the tax collected is paid to him, he is in the same position as if the tax had not been levied. The City having retained the amount, must be made to satisfy her obligations to refund out of any funds or resources at her command.

This Court will not divide the unexhausted power of taxation when the law has made no such division, to find out how much of the one kind or the other has been collected, when the question is to satisfy an unpaid registered judgment, rendered to refund taxes collected by the City and which she had no right to retain and use for her own benefit.

With a seven and a half mill Metropolitan tax, not levied in 1868, with a margin of taxation in excess of one mill for each of the years 1872 to 1877; with an unlimited debt tax to be levied for each year from 1872 to 1877, there can be absolutely no reason why the judgment obtained by relator against the City which is final and conclusive, can not be satisfied by the levy of the one mill tax mentioned in the petition for mandamus.

(*r*) The Court next supports its argument that the rate of taxation had been reached by quoting the testimony of Mr. Font, one of the clerks in the City Comptroller's office. Mr. Font testified that "Beginning with the year 1880, and during the years 1881, 1882, 1885 and 1903, special judgment taxes were ordered levied to pay judgments."

Mr. Font adds these judgment taxes to the margins left on the one and one-quarter per cent taxes and finds that the maximum taxation has been levied. R. 170 (Testimony Font, R. 17).

If Mr. Carriere was entitled to the levy of a special tax to pay his judgment, based on a contract entered into in 1837, at a time when there was no limit to taxation, and a special tax is ordered to pay his judgment by the Supreme Court in 1884, how can this special levy be computed against the relator in this case so as to cut him off? (See 36 A. 688).

State ex rel. Carriere vs. City of New Orleans.

The argument that because some judgment creditors have obtained the levy of a special tax to pay their judgment, therefore relator cannot be entitled to the same remedy, because then the limit of taxation has been reached, is unworthy of serious consideration.

If relator's rights are based on a contract and if at the date of the contract the limit of taxation had not been reached, we can hardly see how his contract rights can be affected by the remedy which the Courts granted to some other contract creditors.

The contract in this case was created in 1868; the limit of taxation was not reached by seven and a half mills in that year, because the City of New Orleans did not choose to levy any Metropolitan Police taxes.

The testimony of Mr. Font quoted by the Supreme Court and found at page 17 of the printed Record, does not include the year 1868 in its calculation, no tax for the Police having been levied that year. All of these matters appertain still to the question of contract which this Honorable Court will look into and decide for itself.

The power of taxation existing at the date of the contract is read into the contract and continues to exist, so far as necessary for the enforcement of the obligations of the contract,

irrespective of any subsequent legislation or constitutional enactments restricting the power of taxation.

Von Hoffman vs. Quincy, 4 Wall. 535;
Wolfe vs. New Orleans, 103 U. S., 358;
State ex rel. Moore vs. New Orleans, 32 A. 726;
State ex rel. Dillon vs. New Orleans, 34 A. 477;
State ex rel. Carriere vs. New Orleans, 36 A. 687;
Nelson vs. St. Martin, 111 U. S. 720;
State ex rel. Marchand vs. New Orleans, 37 A. 17.

Commenting again on the testimony of Mr. Font (R. 17) given on a cross-examination foreign to the examination in chief, we say that his testimony was general in its character and it is impossible to say which year was to be debited with the particular special judgment tax levied by the City Council.

He says that for the years 1873 to 1877 inclusive, the City had a "leeway" of 1.0735% and she levied 2.9067%. No particular year is designated. It is evident that if the Supreme Court of Louisiana exceeded the leeway, and the evidence does not show for what particular year the excess was levied, your Honors are not in a position to impute the levy to any particular year, so as to cut off this relator.

Besides these levies seem to have been made in 1880, 1881 1882, 1885 and 1903.

That does not mean that the limit of taxation was reached in 1873 to 1877 inclusively.

The City of New Orleans was in possession of the evidence. The judgments had been duly registered, the copies had been furnished to the City for registry and they could have been produced without extra costs to the City.

The ordinances levying the tax should have been introduced in evidence.

There are many cases reported in the books which show that the taxes ordered levied were for 1837, others for 1869, others for 1854 and 1858.

37 A. 688, *State ex rel. Carriere vs. New Orleans;*
34 A. 478, *State ex rel. de Leon vs. New Orleans;*
34 A. 469, *Samory vs. New Orleans;*
118 Fed. Rep. 812, *Kilpatrick vs. New Orleans;*
103 U. S. 365, *Wolfe vs. New Orleans;*
17 Fed. Rep. 484, *U. S. vs. New Orleans.*

It was not the duty of relator to sift the judgment list and the ordinances of the City of New Orleans to make out the defence. Your Honors can find no specific fact testified to by Mr. Font either in the amount of the judgments, the claims upon which they were rendered nor the specific years during which and for which the levies were made by the City, to base any judgment thereon.

The witness was undergoing a cross-examination and great latitude is allowed counsel and for that reason no exception was taken to his cross-examination. The witness however, did not testify to a single fact on which this Court can base a judgment against relator.

No levy of taxes made subsequent to 1877 can be so considered as to cut off this relator from his constitutional rights, specially when made on the demand of judgment creditors who are not bound by the limitation of taxation.

(*s*) Coming now to discuss Act 5 of the extra session of 1870 to which we have previously made reference, we find that the act contains no provision which bears on the rights of relator to obtain a mandamus for the levy of a special tax to pay his judgment.

By the first section of the act, no Court is to issue a writ of mandamus against

> "the Comptroller, Deputy Comptroller or any auditing officer of the City of New Orleans, the object of which shall be, either directly or indirectly, to obtain or compel said Comptroller or Deputy Comptroller or auditing officer to issue and deliver any order or warrant for payment of money, or against the Treasurer, Assistant Treasurer or any officer or officers charged with the disbursement of the monies of the City of New Orleans, the object of which shall be, either directly or indirectly, to enforce the payment of money claimed to be due from the City of New Orleans to any person." * * * *

There is nothing in this act against the issuance of a mandamus to levy a tax on the demand of a contract creditor not bound by any subsequent limitation of taxation.

In fact, the Supreme Court of Louisiana has since the passage of the act issued many mandamuses to enforce the levy of taxes to pay judgments. These judgments were rendered subsequent to 1870 and nowhere else except in this case did the Court ever intimate that the terms of Act 5 of 1870, extra session, prohibited these proceedings.

The following list of cases found in the Louisiana reports attest the truth of our contention:

> 30 A., 129, *State ex rel. Carondelet Canal vs. City;*
> 37 A. 13, 529, *State ex rel. Marchaud & Thorn vs. City;*
> 36 A., 687, *State ex rel. Carriere vs. City;*
> 32 A., 726, *Staie ex rel. Moore vs. City;*
> 34 A., 477, *State ex rel. De Leon vz. City.*

On the contrary, as lately as 1903, in the month of November, the Court said:

> "Relator would have the mandamus issue nevertheless, on the authority of the decisions of this Court in the cases

of *State ex rel. Carondelet Canal Co. vs. City*, 30 A. 129; *Marchand vs. City*, 37 A. 13, and *Thorn vs. City*, 37 A. 528. But the problem in those cases was entirely different from the problem in this case. In those cases the Court was dealing with a City unhampered by a limitation upon her right to levy taxes for the payment of her debts, the judgments there in question having been founded on contractual obligations, unaffected by the limitation subsequently imposed upon the City's right to tax. Of course, a city that can pay its judgment debts by simply increasing its customary rate of taxation must do so, *and mandamus is the proper remedy* to enforce the duty."

111 La., 377, *State ex rel. Benedict vs. New Orleans.*

The same view was taken by this Court in *Wolf vs. New Orleans*, 103 U. S., 358.

(*t*) Losing sight of the fact that the taxes we are seeking to make the City refund, were levied by virtue of the Act of 1868, which is prior to the Act of 1870 and which the Louisiana Court admits is the act by virtue of which the collections were made as stated by the Court, in the first eight lines of its opinion, and is therefore the act governing the rights of the parties fixing the date of the contract giving rise to the obligations of the City of New Orleans, the Court goes on to say:

> "In the meanwhile, by Act No. 5 of 1870, extra session, the Courts were prohibited from issuing any writs against the City, or its officers, calling for payment of money, and creditors of the City who obtained judgments against it, were required to register them in the office of the Comptroller where payments were to await appropriations to be made in its annual budgets, by the City Council." R. 169, m.

This language is in direct opposition to what was said in the Benedict case, and to what was done in the various cases where a mandamus was obtained; quoted above.

The act does not prohibit a mandamus against the City.

(u) But now, supposing, that the act does apply to this case and stands as a barrier preventing the Courts from issuing the writ of mandamus to enforce the payment of a judgment, the question is: does not Act 5 of 1870, extra session, impair the contractual obligations upon which the judgment was obtained?

The act certainly does impair the obligations of our contract, and in proof of our assertion we quote from the Louisiana Supreme Court, the first ten lines of its opinion, R. 166, top:

> "By Act 74 of 1868 and subsequent legislation, the General Assembly organized the parishes of Orleans, Jefferson and St. Bernard, including the City of New Orleans and several smaller municipalities therein situated, into a 'Metropolitan District,' and creating a 'Board of Metropolitan Police,' for the governance of same, authorized the Board so created to apportion the expense of the system among the parishes and municipalities mentioned; *required them to levy the taxes* needed to meet their respective apportionments and under prescribed penalties, to turn over the proceeds of such levies, (at one time) to the State Treasurer, for the use of the Police Board, and (later) to the Board itself." R. 166,top.

This then was the foundation and the date at which the City was directed to perform her part of the contract which the Legislature created between her two creatures, the City of New Orleans on the one part and the Board of Metropolitan Police on the other.

The obligations which arose by virtue of the terms of this act of the Legislature were as binding on the corporations as if the two corporations had entered into a conventional obligation of the highest nature.

This contract then having been entered into in 1868 could not be modified by the Act of 1870, extra session, without impairing the obligations of the contract of 1868.

Therefore, if Act 5 of 1870, extra session applies to this cause, the act is null and void because it impairs the obligation of relator's contract of 1868. No writ of *fi. fa.* can issue against the City and according to the Supreme Court of Louisiana, no mandamus can issue under the terms of the Act of 1870. Therefore, a creditor of the City of New Orleans, whose contract antedates the Act of 1870 is deprived of the remedies which the law allowed at the time of his contract, and rendered his contract of less value; we might truthfully say, of no value.

(*v*) Let us now suppose that relator is in error, as to what he has said, the question remains: Can relator who has obtained a judgment against the City of New Orleans, be legally deprived of the right to issue a writ of *fieri facias*, and also of the right to issue a writ of mandamus to levy a special tax to pay his judgment, and be deprived of all remedies to enforce the collection of his judgment without violation of the Constitution of the United States which provides in the 14th amendment:

> "Nor shall any State deprive any person of life, liberty or property without due process of law."

(*x*) The legality of Act 5 of 1870 has been before this Court, in the case of *Wolf vs. New Orleans*, 103 U. S., page 361.

Mrs. Wolf having obtained judgment against the City of New Orleans, applied for a mandamus to levy a tax to pay her judgment. The City insisted that the conditions on which the judgment should be paid were prescribed by Act 5 of 1870, extra session. This Court then explained the manner of payment fixed by the act, *i. e.* by an appropriation to be made by the City Council in the next budget, "*if they deem it proper*," after payment of the necessary expenses of the City.

"These expenditures have heretofore exhausted, and if the limit fixed by the Act of March 6, 1876 (the Premium Bond Act which fixed the limit of taxation at one and one-half per cent), be enforced, will hereafter continue to exhaust nearly all the funds raised. The balance remaining is, and with that limitation of taxation, always will be insufficient to pay any considerable portion of the earliest judgments against the City. So the relator must wait for an indefinite period—perhaps until the statute has barred her claim—and take the uncertain chance of obtaining from the City, in the distant future, any portion of the sum due to her."

"The Act of March 6, 1876, giving effect to what is known as the 'Premium Bond Plan' does not hold out to the bond holder, THE DELUSIVE HOPE OF PAYMENT *in the distant future* which *flitters around* Act No. 5 of 1870; it cuts him off absolutely, unless he will accept the conditions of the proposed plan." *Ib.*, page 363.

The Court reversed the judgment of the lower Court and ordered the mandamus to issue.

This decision was rendered in 1880. Twenty-nine years have elapsed and the City is now relying as her defence to these proceedings, on this same Act 5 of 1870, which holds out its delusive hope of payment in the distant future. The same conditions prevail now as then. Mr. McRacken, President of the City Council, testified that no appropriation has been made in the budgets during the last few years to pay judgments, and no funds are available for that purpose. R. 8 to 13.

Mr. Font testified to the same effect. R. 13 to 18.

It can be truthfully contended that if relator is to rely for the payment of his judgment on the terms of Act 5 of 1870, he will never be paid.

The judgment obtained by relator against the City conclusively established the indebtedness of the City, and its

> " payment is not restricted to any species of property or
> " revenues, or subject to any conditions. If there were
> " any limitations upon the means by which payment of
> " the (judgment) was to be had, they should have been
> " insisted upon when the suit was pending and have been
> " continued in the judgment. The fact that no such limit-
> " ations were there found was conclusive that none ex-
> " isted."

103 U. S., 360, *Wolf vs. New Orleans.*

The judgment is a species of property and the Legislature of Louisiana was without right in 1870 and without right in 1909, to pass a law which renders this species of property valueless and worthless by taking away from the owners of the judgment every and all remedies usually possessed by judgment creditors under the laws of all civilized nations, to collect and enforce judgments at law.

Therefore, if the Act of 1870, No. 5, deprives relator of the right to issue a writ of *fieri facias* and prohibits the Courts of Louisiana from issuing a writ of mandamus to enforce the levy of a special tax to pay the same, then the act violates the fourteenth amendment of the Constitution of the United States, because the State has deprived your relator of his property, without due process of law.

> "The prohibition of the Constitution against the passage of laws impairing the obligation of contracts applies to the contracts of the State and to those of its agents acting under its authority, as well as to contracts between individuals. And that obligation is impaired, in the sense of the Constitution, when the means by which a contract at the time of its execution could be enforced, that is, by which the parties could be obliged to perform it, are rendered less efficacious by legislation operating directly upon those means. Without the remedy the contract may in-

deed, in the sense of the law, be said not to exist, and its obligation to fall within the class of those moral and social duties which depend for their fulfillment wholly upon the will of the individual. The idea of validity and remedy are inseparable, and both are parts of the obligation which is guaranteed by the Constitution. The obligation of a contract is the law which binds the parties to perform their agreement."

103 U. S., 367; *Wolf vs. New Orleans.*

(*y*) When we discuss the question of how is a judgment to be paid by such a municipal corporation as the City of New Orleans, the answer is by taxation.

The power of taxation may be delegated by the Legislature to municipal corporations, which are merely instrumentalities of the State for the better administration of the government in matters of local concern.

"When such a corporation is created, the power of taxation is vested in it, as an essential attribute, for all the purposes of its existence, unless its exercise be in express terms prohibited." * * *

"In a city even of small extent, they have to provide for the preservation of peace, good order and health and the execution of such measures as conduce to the general good of its citizens * * * the power to levy a tax for the payment of its obligation accompanies the obligation, 'without any special mention of such power.' This arises from the fact that such corporations seldom possess—so seldom, indeed, as to be exceptional—any means to discharge their pecuniary obligations, except by taxation. 'It is therefore to be inferred' as observed by this Court in *Loan Association vs. Topeka*, 20 Wall, 660, 'that when the Legislature of a State authorizes a County or City to contract a debt by bond, it intends to authorize it to levy such taxes as are necessary to pay the debt, unless there is in the act itself, or in some general statute, a limitation upon the power of taxation, which repels such an inference."

98 U. S., 393; *United States vs. New Orleans.*

"In the present case, the indebtedness of the City of New Orleans, is conclusively established by the judgment recovered. * * * Nor is the payment of the judgment restricted to any species of property or revenues or subject to any conditions. The indebtedness is absolute. If there were any question originally as to a limitation of the means by which the bonds were to be paid, it is cut off from consideration now by the judgment."

United States vs. New Orleans, 98 U. S., 395. * * *

"As already said, the power of taxation is a power incident to such a corporation, and may be exercised, for all purposes authorized by its charter or subsequent legislation." * * *

"Having the power to levy a tax for the payment of the judgment of the relator, it was the duty of the City, through its authorities, to exercise the power. THE PAYMENT *was not a matter resting in its pleasure, but a duty* which it owed to the creditor. Having neglected this duty, the case was one in which a mandamus should have issued to enforce its performance."

Knox vs. Aspinwall, 24 How., 376;
Von. Hoffman vs. City of Quincy, 4 Wall, 535;
Benbow vs. Iowa City, 7 *ib.*, 313;
Supervisors vs. Rogers, *ib.*, 175;
Supervisors vs. Durant, 9 *ib.*, 415;
County of Cass vs. Johnston, 95 U. S., 360;
United States vs. New Orleans, 98 U. S., 397-398.

"If the debtor be a municipal corporation, the process would be a writ of mandamus compelling the levy of a tax, for it is settled that the process for compelling satisfaction is a *fieri facias* or a mandamus for a tax. Both are declared to be process in execution."

Riggs vs. Johnson, 6 Wall, 198, and *Memphis vs. Brown*, 97 U. S., 300;
17 Fed. Rep., 491; *U. S. vs. New Orleans.*

(z) It is well known that *quasi* corporations, such as townships, school districts, road districts, usually do not possess corporate powers under special charters; yet, certain duties are required of them, and they are granted limited corporate powers. Usually their functions are wholly of a public nature.

School District vs. Wood, 13 Mass., 192.

Following out this view, the Courts of the New England States held, that when judgments are recovered against towns, parishes and school districts, any of the property of private owners within the municipal division is liable to be taken for their discharge.

Cooley's Constitutional Limitations, page 241 (side paging, 4th edition).

The liability of the inhabitants of towns and communities, was very early adopted by our ancestors. This principle seems to have been applied in England, especially in cases where a statute fixed a liability upon a municipality which had no corporate funds. The same reason and necessity for the application of such a principle and practice existed in both countries. Such corporations are of a public and political character; they exercise a portion of the governing power of the State. Statutes impose upon them important public duties.

> "In the performance of these they must contract debts
> " and liabilities, which can only be discharged by a resort
> " to individuals, either by taxation or execution. Taxa-
> " tion, in most cases, can only be the result of the volun-
> " tary action of the corporation, dependent upon the con-
> " tingent will of the majority of the corporations, and upon
> " their tardy and uncertain action."

Therefore the individual liability of the corporators was recognized and enforced.

Russell vs. The Men of Devon, 2 Russ. 45;
Cooley's Constitutional Limitations, page 243;
Attorney General vs. City of Exeter, 2 Term. Rep. 660;
and many cases quoted in *Cooley* at page 244.

In one case it was said that the practice

"that the town or society should be brought to a sense of "duty and make provisions for payment and indemnity" was a very good reason.

6 Conn., 223.

This rule however, cannot be made

" applicable, in those States where express provision is " made by law for compulsory taxation to satisfy any " judgment recovered against the corporate body; the duty " being imposed upon some officer, who may be compelled " by mandamus to perform it."

Cooley's Const. Lim., page 247.

We find it to be the universal and admitted jurisprudence that where the limit of taxation, had not been reached at the date of the contract which gave rise to the obligation, that the judgment creditor is entitled to the levy of a tax to pay his judgment. This right can be enforced by the writ of mandamus, which then takes the place of an execution.

The testimony of Mr. James McRacken, the President of the City Council of New Orleans, tends to show that the City made no appropriation in the budget for the payment of judgment and no debt of any consequence has been paid during the last five or six years. R. 10 to 13.

Mr. Font, one of the Chief Clerks in the City Conptroller's office, testified to the effect that since about 1897 the City discontinued the annual budget appropriation of one thousand dollars to pay judgments. R. 14.

If the practice of appropriating $1,000.00 in the yearly budget had been kept in force, relator's judgment would never be paid inasmuch as the interest on the judgment amounts to more

than $6,000.00 per annum and the appropriation of $1,000.00 would allow the judgment to accumulate, at the rate of $5,000.00 per annum.

To give this Honorable Court an idea of the helplessness of the judgment creditors of the City of New Orleans and exemplify the fact that Act 5 of 1870, extra session, deprives one of his property without due process of law, we call your attention to the following decisions of the Supreme Court of Louisiana enforcing the terms of this illegal and unconstitutional act and refusing all remedy to the unfortunate judgment creditors of the City:

State ex rel. Fernandez vs. The City of New Orleans, 45 A., 1389;
State ex rel. Foy vs. New Orleans, 49 A., 946;
State ex rel. Foy vs. New Orleans, 50 A., 1074;
State ex rel. Benedict vs. New Orleans, 111 La., 374;
State ex rel. Lorenz vs. New Orleans, 115 La., 851.

(*zz*) We now desire to give an explanation of the reason why this relator caused his judgment to be registered in the Comptroller's office. This was done to comply with a decision of this Court in the case of *Morris Ranger vs. The City of New Orleans*, reported in the 12th Otto, page 203.

This Court said:

> "That this requirement did not impede the collection of the judgment or prevent his resort to other remedies." *ib.*

The right of relator to these proceedings is not only reserved but is admitted in this decision.

Louis A. Hubert, the Receiver of the Board of Metropolitan Police, also the plaintiff in this writ of error, therefore prays that the judgment and decree of the Supreme Court of Louisiana be annulled and reversed and that the writ of mandamus prayed for in these proceedings, be issued with costs and that a special

tax of one mill be ordered levied by the respondent to pay and satisfy the judgment obtained by relator against the City of New Orleans, with interest and costs and relator will ever pray, etc.

CHAS LOUQUE,
Of Counsel.

New Orleans, February 22, 1909.

APPENDIX.

ACTS OF LOUISIANA FOR THE YEAR 1868.

No. 74.

AN ACT

To Establish a Metropolitan Police District and to provide for the Government thereof.

Section 1. Be it enacted by the Senate and the House of Representatives of the State of Louisiana, in General Assembly convened, That the Parishes of Orleans, Jefferson and St. Bernard are hereby constituted and territorially united for the purposes of police government and police discipline therein, into one district, which shall be known and called "The Metropolitan Police District of New Orleans, State of Louisiana."

Sec. 2. Be it further enacted, etc. That the powers and duties connected with and incident to the police government and discipline of the said district shall be as hereinafter more especially provided for, vested in, and exercised by a board, consisting of five commissioners, one to be a resident of the City of Jefferson, to be styled the Board of Metropolitan Police, and by a Metropolitan Police Force, composed of a Superintendent of Metropolitan Police Force, Surgeons of Metropolitan Police Force, Captains of Metropolitan Police Force, Sergeants of Metropolitan Police Force, Corporals of Metropolitan Police Force, Patrolmen of Metropolitan Police Force, Clerks and Doormen of Metropolitan Police Force.

Sec. 3. Be it further enacted, etc., That the said Commissioners of Metropolitan Police shall be appointed by the Governor of the State of Louisiana, with the advice and con-

sent of the Senate, and shall hold and occupy the said offices of commissioners for the term of office of the Governor who may appoint them; Provided, That the commissioners so appointed shall continue to hold office until their successors shall have been duly appointed and qualified. Not less than three of the said commissioners shall constitute a quorum, (but either of the said commissioners may, at any time, be removed by the Governor of the State), under the provisions of the statutes relating to the removal from office, which provisions are hereby extended so as to relate to each one of the said commissioners; and in all cases where charges are made against a commissioner, he shall have an opportunity to present evidence in his behalf.

Sec. 4. Be it further enacted, etc. This section provides that the Commissioners of the Metropolitan Police shall not hold any other office.

Sec. 5. Be it further enacted, etc. This section relates to the number of officers, etc., to be appointed.

Sec. 6. Be it further enacted, etc. That persons appointed by the Metropolitan Police Commissioners must take and file oath of office.

Sec. 7. Be it further enacted, etc. This section relates to the duties of the Board as to appointments.

Sec. 8. Be it further enacted, etc. This section relates to tenure of office of members of the force, and qualifications.

Sec. 9. Be it further enacted, etc. This section relates to divisions in precincts, and assignment of officers.

Sec. 10. Be it further enacted, etc., That the Board of Metropolitan Police shall provide such office and business accommodations as it shall deem requisite for the transaction of its own business and that of its subordinate officers, subject to approval by the Auditor of Public Accounts and Treasurer of the State. There shall be a central office in the City of New Orleans, to be known as the "Central Department of Metropolitan Police."

Sec. 11. Be it further enacted, etc. This relates to vacancies and how filled.

Sec. 12. Be it further enacted, etc. This relates that the Board may appoint special policemen, and powers of special policemen.

Sec. 13. Be it further enacted, etc. This relates to qualifications for commissioners.

Sec. 14. Be it further enacted, etc. This relates to the Lieutenant-Governor ex-officio President of the Board.

Sec. 15. Be it further enacted, etc. This relates to the power to execute criminal process.

Sec. 16. Be it further enacted, etc. This relates to the Treasurer and his duties and his bond.

Sec. 17. Be it further enacted, etc. This relates to commissions.

Sec 8. Be it further enacted, etc. This relates to security of members of the force.

Sec. 19. Be it further enacted, etc. This relates to improper conduct of members and officers.

Sec. 20. Be it further enacted, etc. This relates to resignations.

Sec. 21. Be it further enacted, etc. The Board may compel attendance of witnesses, and penalty for false swearing.

Sec. 22. Be it further enacted, etc. This relates to Conservators of the peace.

Sec. 23. Be it further enacted, etc. The Board may make rules, etc.

Sec. 24. Be it further enacted, etc. This relates to accounts and complaint books.

Sec. 25. Be it further enacted, etc. This relates to the Superintendent who is directed to report in writing, and the Board to report to Governor.

Sec. 26. Be it further enacted, etc. This relates to violence and resisting officers.

Sec. 27. Be it further enacted, etc., That the Board of Commissioners, convened as a board of estimate and apportionment, shall, on the first Monday after their appointment and annually thereafter, proceed to make up a financial estimate of the sums required annually for expenses in the execution of criminal process, supplying for the fitting up, lighting, cleansing, repairing, furnishing of police offices and stations, lock-ups, houses of detention, for alterations in, additions to and repairs of same, for office fixtures and accommodation, advertising, printing and stationery, police badges, numbers and clubs, beds and bedding for the police force, and for witnesses and prisoners, for support of witnesses and prisoners while in the custody of the police, for secret police service, hack and cab hire, and also for all sums necessary for counsel fees, law expenses and disbursements by the Board of Commissioners, or rendered necessary in criminal or civil actions and proceedings against the said Commissioners or officers or members of the force for acts done in the discharge of duty, or by color of office, and also for the salaries and pay required by this Act, and such other general and contingent expenses as may from time to time in the judgment of such board of estimate and apportionment, become necessary or proper, with the enumeration thereof. Such estimate shall be accompanied with a written apportionment by said board, of the proportion of expenses applicable to each of the cities and parishes in the Metropolitan District, in ratio of the number of police officers and men authorized by this Act, and employed by such cities and parishes respectively. The said estimate and apportionment shall be submitted to the mayors of the cities and police juries of the parishes within the said Metropolitan District to consider the same, and if the said mayors or police juries shall object in writing to such estimate and apportionment, or to any portion thereof, and so notify,

or cause to be notified, the said Board of Commissioners, it shall be the duty of the latter to carefully revise the same and consider the said objection; but if said board shall adhere to their original action of estimate and apportionment, or if they shall modify the same, then their action shall be final, and shall be binding upon the respective cities and towns interested therein.

Sec. 28. Be it further enacted, etc., That the said Board of Commissioners shall make a correct estimate and apportionment for each of the cities and parishes within the Metropolitan District, of the number of police offices and stations, of lock-ups, houses of detention, beds and bedding, fixtures, furniture, and all other necessary equipments and accommodations required for the efficient working of the department in such cities and parishes respectively, and it is hereby declared to be the duty of the mayors and common councils of such cities, and of the police juries of such towns, to provide for the foregoing enumerated police offices, stations, lock-ups, houses of detention, beds, bedding, furniture, fixtures, equipments and accommodations, in accordance with and agreeably to the estimate and apportionment of the Board of Commissioners; in case the said mayors, common councils, or police juries of said cities and parishes neglect or refuse, within ten days after having been thereto in writing notified by the said board to provide all the foregoing enumerated police offices, stations, lock-ups, houses of detention, furniture, fixtures, beds, bedding, equipments, and accommodations, as required by the estimate and apportionment of the said board, then the said Board of Commissioners may make their own provisions by contract, leasing, hiring, purchasing and repairing, and such contracts, leases and purchases as aforesaid shall be a proper charge and debt against the said cities and parishes, the mayors, common council, and police juries of which so refused or neglected to make provision in manner and form as aforesaid; but the title to all real property purchased for the purpose aforesaid shall vest in all cities and parishes respectively which contributed the money to purchase the same.

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Sec. 29. Be it further enacted, etc., That the common councils of the cities of New Orleans, Jefferson City and Carrollton, and the police juries of the towns of Algiers and Gretna, and of the parishes of Orleans, Jefferson and St. Bernard are hereby respectively empowered and directed annually to order and cause to be raised and collected by the tax upon the estates, real and personal, subject to taxation according to law, within the said cities and towns, the sums of money as aforesaid, annually estimated and apportioned as the share of such cities or parishes of the said total expenses of the Metropolitan Police District.

Sec. 30. Be it further enacted, etc., That the State Treasurer shall receive the sums estimated and apportioned to the said cities and parishes of the Metropolitan District from or through the treasurers of said cities and parishes respectively, and give proper receipts for such sums as he may receive. All moneys paid out of the Metropolitan Police Fund shall be so paid out on a warrant signed by the President and any two members of the board attested by the Chief Clerk.

Sec. 31. Be it further enacted, etc., That it shall be the duty of the Board of Metropolitan Police, if in their judgment advisable, to set apart a Metropolitan Sanitary Police Company, and appoint a captain and sergeants not exceeding four of said company, and to assign to said company such special powers and duties by the orders, rules and regulations as may be publicly advantageous.

Sec. 32. Be it further enacted, etc. This relates to the inspection of ferries, houses, buildings, etc.

Sec. 33. Be it further enacted, etc. The Board may cause filthy premises to be cleansed.

Sec. 34. Be it further enacted, etc. Rewards may be accepted with the consent of the Board.

Sec. 35. Be it further enacted, etc. This relates to fines, extra rewards, etc. How applied.

Sec. 36. Be it further enacted, etc. This relates to provision in case of death or disability.

Sec. 37. Be it further enacted, etc. This relates to stolen property.

Sec. 38. Be it further enacted, etc. This relates to the custody of alleged stolen property.

Sec. 39. Be it further enacted, etc. This relates to unclaimed money and property.

Sec. 40. Be it further enacted, etc. This relates to articles to be used as evidence on trial.

Sec. 41. Be it further enacted, etc. This relates to police officers to preserve order in the streets and at places of public resort.

Sec. 42. Be it further enacted, etc. This relates to arrests authorized without warrant.

Sec. 43. Be it further enacted, etc. This relates to powers of general police inspection, and Commissioners may authorize search of pawnbrokers' shops. Also penalty for unlawful interference.

Sec. 44. Be it further enacted, etc. This relates to suppression of gaming houses.

Sec. 45. Be it further enacted, etc. This relates to police boats and mounted police.

Sec. 46. Be it further enacted, etc. This relates to power to execute criminal process.

Sec. 47. Be it further enacted, etc. This relates to rewards for arrest of criminals.

Sec. 48. Be it further enacted, etc. This relates to proceedings after arrests.

Sec. 49. Be it further enacted, etc. This relates to warrants of appointments.

Sec. 50. Be it further enacted, etc., That the salaries and compensation of Police Commissioners and other officers and employes of the Board of Metropolitan Police shall, from the time of their appointment, be as follows:

President of the Board, two thousand five hundred dollars, ($2,500).
Treasurer of the Board, two thousand five hundred dollars, ($2,500).
Other Commissioners, each, two thousand dollars, ($2,000).
Superintendent, three thousand dollars, ($3,000).
Chief Clerk, two thousand dollars, ($2,000).
Deputy Clerk, one thousand six hundred dollars, ($1,600).
Property Clerk, one thousand two hundred dollars, ($1,200).
Other Clerks, one thousand two hundred dollars, ($1,200).
Police Surgeons, one thousand six hundred dollars, ($1,600).
Captains, one thousand eight hundred dollars, ($1,800).
Sergeants, one thousand five hundred dollars, ($1,500).
Corporals, one thousand one hundred dollars, ($1,100).
Detectives, one thousand four hundred dollars, ($1,400).
Patrolmen, one thousand dollars, ($1,000).
Doormen, eight hundred dollars, ($800).

The salaries and pay aforesaid shall be paid monthly to each person entitled thereto, in modes to be prescribed by the rules and regulations, subject to such deduction each month from the salaries or pay of each member of the Metropolitan Police Force as the Treasurer shall make (and which deduction he is hereby authorized to retain) to satisfy fines imposed on any member of the Metropolitan Police Force by way of discipline or punishment, as prescribed by the rules and regulations of the Board. The salaries of the Commissioners shall be paid by the Treasurer of State out of the Metropolitan Police Fund.

Sec. 51. Be it further enacted, etc. This relates to enforcement of municipal ordinances.

Sec. 52. Be it further enacted, etc. This relates to police telegraph.

Sec. 53. Be it further enacted, etc. This relates to officers of police telegraph.

Sec. 54. Be it further enacted, etc., That the salaries and compensations of the said police telegraph corps shall be as follows:

To a Superintendent of Fire Alarm and Police Telegraph, two thousand five hundred dollars, ($2,500.00) per annum.

To the Assistant Superintendent of Fire Alarm and Police Telegraph, one thousand eight hundred dollars, ($1,800.00) per annum.

To the Operators one thousand four hundred dollars, ($1,400.00) per annum.

Lineman, one thousand eight hundred dollars ($1,800.00), per annum.

Batteryman, eight hundred dollars ($800.00) per annum.

The salaries and pay aforesaid shall be paid monthly, to each person entitled thereto, in modes to be prescribed by the rules and regulations of the Board, subject to such deduction for neglect of duty, violation of rules and regulations, etc., as may be adjudged and prescribed by the Board.

Sec. 55. Be it further enacted, etc., That there shall be appointed by the Board of Police Commissioners two surgeons, who shall perform the duty now performed by the city physician and such other duties as the Commissioners may from time to time prescribe. The police surgeons shall also act as experts for the Coroners, making post mortem examinations whenever called upon by the Coroners of the districts. The salary of these surgeons shall be two thousand five hundred dollars, ($2,500.00) per annum.

Sec. 56. Be it further enacted, etc. This section relates to the privilege of bail.

Sec. 57. Be it further enacted, etc., That all laws and parts of laws conflicting with the provisions of this Act, be and the

same are hereby repealed, and that this Act shall take effect from and after its passage.

(Signed) CHAS. W. LOWELL,
Speaker of the House of Representatives.
(Signed) OSCAR J. DUNN,
Lieutenant-Governor, and Prest. of the Senate.
Approved September, 14th, 1868.
(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy:
GEO. E. BOVEE, Secty. of State.

ACT 92 OF THE LOUISIANA LEGISLATURE FOR YEAR 1869.

Sec. 1. Be enacted, etc., That the Act entitled "An Act to Establish a Metropolitan Police District and to provide for the government thereof," is hereby amended and re-enacted so as to read as follows:

Sec. 2. Be it further enacted, etc., That the Parishes of Orleans, Jefferson and St. Bernard, are hereby constituted and territorially united for the purposes of police government and police discipline therein, into one district, which shall be known and called "The Metropolitan Police District of Louisiana, State of Louisiana."

Sec. 3. Be it further enacted, etc., That the powers and duties connected with and incident to the police government and discipline of the said district, shall be as hereinafter more especially provided for, vested in and exercised by a board consisting of five commissioners, one to be a resident of the City of Jefferson, to be styled the "Board of Metropolitan Police," and by a Metropolitan Police Force composed of a Superintendent of Metropolitan Police, Surgeons of Metropolitan Police Force, Captains of Metropolitan Police Force, Sergeants of Metropolitan Police Force, Corporals of Metropolitan Police Force, Patrolmen of Metropolitan Police Force, Clerks and Doormen of Metropolitan Police Force.

Sec. 4. Be it further enacted, etc. This relates to appointment and removal of commissioners.

Sec. 5. Be it further enacted, etc. This relates to Commissioners not to hold other public offices.

Sec. 6. Be it further enacted, etc. This relates to the number of officers of police force.

Sec. 7. Be it further enacted, etc. This relates to the oath of office.

Sec. 8. Be it further enacted, etc. This relates to officers how appointed.

Sec. 9. Be it further enacted, etc. This relates to terms of office.

Sec. 10. Be it further enacted, etc. This relates to precincts and sub-districts.

Sec. 11. Be it further enacted, etc. This relates to offices.

Sec. 12. Be it further enacted, etc. This relates to vacancies.

Sec. 13. Be it further enacted, etc. This relates to special policemen.

Sec. 14. Be it further enacted, etc. This relates to powers of officers.

Sec. 15. Be it further enacted, etc. This relates to the Treasurer, his duties, etc.

Sec. 16. Be it further enacted, etc. This relates to warrants of appointment.

Sec. 17. Be it further enacted, etc. This relates to securities and oaths.

Sec. 18. Be it further enacted, etc. This relates to punishment of officers.

Sec. 19. Be it further enacted, etc. This relates to resignation.

Sec. 20. Be it further enacted, etc. This relates to subpoenas and depositions.

Sec. 21. Be it further enacted, etc. This relates to rules and regulations.

Sec. 22. Be it further enacted, etc. This relates to records and stations.

Sec. 23. Be it further enacted, etc. This relates to reports.

Sec. 24. Be it further enacted, etc. This relates to penalty for opposing or insulting police officers.

Sec. 25. Be it further enacted, etc., That the Board of Commissioners, convened as a Board of Estimate and Apportionment, shall, on the First Monday after their appointment, and annually thereafter, proceed to make up a financial estimate of the sums required annually for expenses in the execution of criminal process, supplying for the fitting up, lighting up, cleansing, repairing, furnishing of police offices and stations, lock-ups, houses of detention, for attendance, in additions to and repairs of same, for office fixtures and accommodations, advertising, printing and stationery, police badges, numbers and clubs, beds and bedding for the police force, and for witnesses and prisoners while in the custody of the police, for secret police service, hack and cab hire, and also the sums necessary for counsel fees, law expenses and disbursements of the Board of Commissioners, or rendered necessary in criminal or civil actions and proceedings against the said Commissioners or officers or members of the force for acts done in the discharge of duty, or by color of office, and also for the salaries and pay required by this Act, and such other general and contingent expenses as may be from time to time, in the judgment of such Board of Estimate and Apportionment, become necessary or proper with the enumeration thereof. Such estimate shall be accompanied with a written apportionment by said

Board of the proportion of expenses applicable to each of the cities and parishes in the Metropolitan District, in ratio of the number of police officers and men assigned by the said Metropolitan Police Board for police duty in said cities or parishes within the Metropolitan Police District.

The said estimate and apportionment shall be submitted to the Mayor of the cities, and the police juries of the parishes within the said Metropolitan Police District, to consider the same, and if the said mayors or police juries shall object in writing to such estimates and apportionment or to any portion thereof, and so notify or cause to be notified the said Board of Commissioners, it shall be the duty of the latter to carefully revise the same and consider the said objections; but if such Board shall adhere to their original action of estimate and apportionment, or if they shall modify the same, then their action shall be final and shall be binding upon the respective cities and parishes within the Metropolitan District interested therein.

Sec. 26. Be it further enacted, etc., That the said Board of Commissioners shall make a correct estimate and apportionment for each of the cities and parishes within the Metropolitan District of the lock-ups, houses of detention, beds and bedding, fixtures, furniture and all other necessary equipments and accommodations required for the efficient working of the department in such cities and parishes respectively; and it is hereby declared to be the duty of the mayors and common councils of such cities, and of the police juries of such parishes to provide for the foregoing enumerated police offices, stations, lock-ups, houses of detention, beds, bedding, furniture, fixtures, equipments and accommodations, in accordance with and agreeably to the estimate and apportionment of the Board of Commissioners; and in case the said mayors, common councils, or police juries of said cities and parishes refuse or neglect within ten days after having been thereto in writing notified by the said Board to provide all the foregoing enumerated police offices, stations, lock-ups, houses of detention, furniture, fixtures, beds, bedding, equipments and accommodations as required by the estimate and apportionment of the said Board,

then the said Board of Commissioners may make their own provisions by contract, leasing, hiring, purchasing and repairing, and such contract, leases and purchases, as aforesaid, shall be a proper charge and debt against the said cities and parishes, the mayors, common councils and police juries of which so refused or neglected to make provisions in manner and form as aforesaid; but the title to all real property purchased for the purpose aforesaid, shall vest in the cities and parishes, respectively, which contributed the money to purchase the same.

Sec. 27. Be it further enacted, etc., That the common councils of the cities of New Orleans, Jefferson and Carrollton, and the police juries of the towns of Algiers and Gretna, and of the Parishes of Orleans, Jefferson and St. Bernard, are hereby respectively empowered and directed annually to order and cause to be raised and collected by the tax upon the estate, real and personal, subject to taxation according to law, within the said cities and parishes, the sums of money as aforesaid annually estimated and apportioned as the share of said city or parishes of said total expenses of the Metropolitan Police District.

Sec. 28. Be it further enacted, etc., That the State Treasurer shall receive the sums estimated and apportioned to the said cities and parishes of the Metropolitan District from or through the treasurers of the said cities and parishes, respectively, and give proper receipts for such sums as he may receive. All moneys paid out of the Metropolitan Police Fund shall be so paid out on a warrant signed by the President and any two other members of the Board, attested by the Chief Clerk.

Sec. 29. Be it further enacted, etc. This relates to the advisability of forming a Metropolitan Sanitary Police Company.

Sec. 30. Be it further enacted, etc. This relates to the powers and duties of the Metropolitan Police Sanitary Company.

Sec. 31. Be it further enacted, etc. This relates to the cleansing of premises.

Sec. 32. Be it further enacted, etc. This relates to the meritorious services of officers.

Sec. 33. Be it further enacted, etc. This relates to all moneys given as rewards, etc., to be deposited in the bank wherein the Treasurer of the Metropolitan Police shall keep an account, and to be called the "Metropolitan Police Fund."

Sec. 34. Be it further enacted, etc. This relates to disabled and superannuated officers.

Sec. 35. Be it further enacted, etc. This relates to property seized to be returned to persons when innocent.

Sec. 36. Be it further enacted, etc. This relates to disputed property to be detained.

Sec. 37. Be it further enacted, etc. This relates to sale of property seized.

Sec. 38. Be it further enacted, etc. This relates to property seized how obtained in evidence.

Sec. 39. Be it further enacted, etc. This relates when the services of military may be required.

Sec. 40. Be it further enacted, etc. This relates to duties of policemen.

Sec. 41. Be it further enacted, etc. This relates to powers of policemen.

Sec. 42. Be it further enacted, etc. This relates to general supervision of police force over shops, etc. Search warrants, interference with officers.

Sec. 43. Be it further enacted, etc. This relates to gambling and bawdy houses.

Sec. 44. Be it further enacted, etc. This relates to water precincts. Suburban precincts.

Sec. 45. Be it further enacted, etc. This relates to rewards for apprehension of criminals.

Sec. 46. Be it further enacted, etc. This relates to reports of arrests.

Sec. 47. Be it further enacted, etc., That the salaries and compensation of the Police Commissioners and other officers and employes of the Board of Metropolitan Police shall, from the time of their appointment, be as follows:

Vice-President of the Board, two thousand five hundred dollars, ($2,500.00).

Treasurer of the Board, two thousand five hundred dollars, ($2,500.00).

Other Commissioners, each, two thousand dollars, ($2,000.00).

Superintendent, three thousand dollars, ($3,000.00).

Chief Clerk, two thousand dollars, ($2,000.00).

Deputy Clerk, one thousand six hundred dollars, ($1,600.00).

Property Clerk, one thousand two hundred dollars, ($1,200.00).

Other Clerks, one thousand two hundred dollars, ($1,200.00).

Police Surgeons, two thousand dollars, ($2,000.00).

Captains, one thousand eight hundred dollars, ($1,800.00).

Sergeants, one thousand five hundred dollars, ($1,500.00).

Corporals, one thousand one hundred dollars, ($1,100.00).

Detectives, one thousand four hundred dollars, ($1,400.00).

Patrolmen, one thousand dollars, ($1,000.00).

Doormen, six hundred dollars, ($600.00).

The salaries and pay aforesaid shall be paid monthly to each person entitled thereto, in modes to be prescribed by the rules and regulations subject to such deductions each month from the salaries or pay of each member of the Metropolitan Police Force as the Treasurer shall make (and which deduction he is hereby authorized to retain) to satisfy fines imposed on any member of the Metropolitan Police Force by way of discipline

or punishment, as prescribed by the rules and regulations of the Board.

The salaries of Commissioners shall be paid by the Treasurer of the State out of the Metropolitan Police Fund.

Sec. 48. Be it further enacted, etc. This relates to enforcement of ordinances of cities and parishes.

Sec. 49. Be it further enacted, etc. This relates to police and fire alarm telegraph.

Sec. 50. Be it further enacted, etc. This relates to officers of police fire alarm telegraph.

Sec. 51. Be it further enacted, etc. This relates to salaries of officers of police alarm telegraph, also surgeons' salaries, etc.

Sec. 53. Be it further enacted, etc. This relates to bail of prisoners.

Sec. 54. Be it further enacted, etc. This relates to Lieutenant-Governor ex-officio President of Board.

Sec. 55. Be it further enacted, etc. This relates to present officers to continue in office.

Sec. 56. Be it further enacted, etc. This relates that all laws or part of laws contrary to the provisions of this Act, and all laws or parts of laws on the same subject matter, be and they are hereby repealed.

Sec. 57. Be it further enacted, etc. That this act shall take effect from and after its pasasge.

(Signed) CHAS. W. LOWELL,
Speaker of the House of Representatives.
(Signed) OSCAR J. DUNN,
Lieutenant-Governor and President of the Senate.

Approved March 8th, 1869.

(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy:

GEO. E. BOVEE,
Secretary of State.

ACTS OF LOUISIANA, 1870.

Extra Session.

No. 5.

To limit and restrict the power of courts to issue orders or writs of mandamus and fieri facias against the City of New Orleans and the officers thereof, and to declare the effect and prescribe the mode of satisfying judgments for money against the City of New Orleans:

Section 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That from and after the passage of this Act, no Court within the State shall have authority or jurisdiction to allow, order, hear, entertain or enforce any summary process or proceeding, or writ, or order of mandamus, or any order or proceeding in the nature of an order or writ of mandamus, either against the Comptroller, Deputy Comptroller, or any auditing officer of the City of New Orleans, the object of which shall be, either directly or indirectly, to obtain or compel said Comptroller or Deputy Comptroller, or auditing officer, to issue and deliver any order or warrant for payment of money, or against the Treasurer, Assistant Treasurer, or any officer or officers charged with the disbursement of the moneys of the City of New Orleans, the object of which shall be, either directly or indirectly to enforce the payment of money claimed to be due from the City of New Orleans to any person, persons, corporation or corporations whatsoever, but all actions or proceedings for the recovery of any sum of money claimed to be owing by the City of New Orleans shall be in the ordinary form of action, instituted against the City of New Orleans as a corporation, and not against any branch, department or officer thereof, and shall, in all respects, be conducted in the same manner as other ordinary actions.

Sec. 2. Be it further enacted, etc., That hereafter no writ of execution or fieri facias shall issue from any of the courts in this State against the City of New Orleans to enforce the payment of any judgment for money against the City of

New Orleans, but final judgment against the City of New Orleans, condemning said corporation to pay any sum in money, when the same shall become executory shall have the effect in law of establishing and fixing the amount of the plaintiff's demand against said corporation, and the plaintiff may cause a certified copy of the said judgment, together with a copy of the plaintiff's petition and the defendant's answer in the cause in which such judgment is rendered, together with the certificate of the clerk of said court that such judgment is final and executory, to be filed in the office of the Comptroller of said City, and it shall be the duty of the Comptroller or auditing officer of said corporation to receive the same and cause the same to be registered in his office of the date on which the same shall have been presented, and when so registered it shall be the duty of the Comptroller to warrant on the Treasurer or disbursing officer of the corporation for the amount due thereon without any special appropriation of money therefor by the common council; provided, always, that there be sufficient money in the treasury to pay such judgment specially designated and set apart for that purpose in the annual budget or detailed statement of items of liability and expenditure required to be made by the one hundred and twenty-fourth section of the Act of the Legislature, entitled An Act to amend an act entitled "An Act to Consolidate the City of New Orleans and to Provide for the Government of the City of New Orleans and the Administration of the Affairs Thereof," approved March twenty, eighteen hundred and fifty-six, or such laws as may be hereafter enacted relating thereto.

Sec. 3. Be it further enacted, etc., That in case the amount of money designated in the annual budget for the payment of judgments against the City of New Orleans at the date when any judgments against the said corporation shall have been final and executory shall have been exhausted, the common council shall have power, if they deem it proper, to appropriate from the money set apart in the budget or annual estimate for contingent expenses, a sufficient sum of money to pay said judgment or judgments, but if no such appropriation be made by the Com-

mon Council, then all judgments shall be paid in the order in which they shall be filed and registered in the office of the Comptroller from the first money next annually set apart for that purpose.

Sec. 4. Be it further enacted, etc., That if, by reason of the failure of the Comptroller or the auditing officer of the City of New Orleans, or of the Treasurer or disbursing officer of said corporation to perform his duty, or if, by reason of the neglect or malfeasance of them, or either of them, any person, persons, corporation or corporations, shall be unjustly delayed in the payment of any judgment or demand against the City of New Orleans, or shall not be paid in their due and regular order in which such demands are entitled to be paid, and shall be prejudiced and suffer loss and damage thereby, or by reason of any unjust preference to other creditors, such person, persons, corporation or corporations so injured by the act of either of said officers, shall have a right of action against such officer or officers individually, by whose act or acts he or they have suffered loss and damage, and against the surety or sureties on the official bond of such officer, and may recover damages therefor against said officer and sureties for such amount as they may establish on the trial of such cause.

Sec. 5. Be it further enacted, etc., That this Act take effect and be in force from and after its passage, and that all acts and parts of acts in conflict with this act be and are hereby repealed, insofar as the same conflict with any of the provisions of this Act.

(Signed) MORTIMER CARR,
Speaker of the House of Representatives.
(Signed) OSCAR DUNN,
Lieutenant-Governor and President of the Senate.

Approved March 17th, 1870.
(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy:
(Signed) GEO. E. BOVEE,
Secretary of State.

ACTS OF LOUISIANA FOR THE YEAR 1870.

Extra Session.

No. 7.

AN ACT

To extend the limits of the Parish of Orleans, and to change the boundaries of the parishes of Orleans and Jefferson, and to consolidate the cities of New Orleans and Jefferson, and to provide for the government of the City of New Orleans and the administration of the affairs thereof, and to repeal an act entitled "An Act to incorporate the City of New Orleans," approved February 23rd, 1852; and to repeal all acts amendatory thereto, and to repeal an act entitled "An Act to incorporate the City of Jefferson," approved March 9th, 1850, and to repeal all acts amendatory thereto, and to provide for the funding of the floating indebtedness of the corporations as consolidated by this act.

Sections 1 and 2. Fixe the limits of the Parish of Orleans so as to include Jefferson City.

Sec. 3. Subdivides the City.

Sec. 4. Names the officers to govern the City.

Sec. 5. Relates to the qualifications, oaths, bonds, etc., of the Mayor and Administrators

Sec. 6. Relates to meetings of Council, books, etc.

Sec. 7. Fixes the manner of filling vacancies.

Sec. 8. Provides for duties of the Mayor.

Sec. 9. Provides for other departments besides the office of Mayor.

Sec. 10. Provides for the duties of the heads of each department.

Sec. 11. Relates to the number of clerks and officers, their appointment, etc.

Sec. 12. Fixes the power to pass certain ordinances, division.

* * * * * * * *

Twentieth. "To levy an equal and uniform tax for the purposes of this Act, upon all property, real and personal, in said City, under assessments thereof, to be made in the manner said Council shall prescribe, and to provide for its collection; but said tax, added to the consolidated loan tax and to the special tax, for the payment of the annual interest on the bonds issued by the City for subscription to the stocks of the New Orleans, Opelousas and Great Western Railroad Co., the New Orleans, Jackson and Great Northern Railroad Co., and the Pontchartrain Railroad Co., and the interest on the ten per cent bonds, and the interest on seven per cent. bonds issued by the City of New Orleans, shall not, in the aggregate, be more than one dollar and seventy-five cents on the one hundred dollars of valuation annually, except in case of invasion or insurrection, provided it be sufiicient to pay the interest on the consolidated debt and railroad bonds issued by the City of New Orleans; and also for the purpose of this Act, to levy, impose and collect a license tax upon all persons pursuing any trade, profession or calling, and to provide for its collection; and said license tax shall not be construed to be a tax on property.

Sec. 13. Be it further enacted, etc., That all real and personal property in the City of New Orleans, whether owned by individuals or corporations, shall, for the purpose of this Act, be liable to taxation, subject to the exemptions specified by this Act.

Sec. 14. Be it further enacted, etc., That the term "real property," as used in this Act, shall be construed to include land, and all buildings, machinery and structures of every kind, erected upon or affixed to the same. The term "personal property" shall be construed to include all household furniture,

moneys, goods, capital, chattels, incomes, debts due from solvent debtors, whether on account, contract, note, bond, mortgage, certificates, or any other obligation, public stock and stocks in corporations, moneyed or otherwise, any general property which is not real. The term "income" shall be construed to include, and be confined to all moneys, salaries, wages, pay, commissions, brokerage and fees received in compensation for services or labor rendered, and all revenues and dividends received upon stocks in moneyed corporations, not taxable under this Act.

Sec. 15. Declares what property is exempt from taxation.

Sec. 16. Relates to individual stock, etc.

Sec. 17. Refers to Commissioners of the consolidated debt, etc.

Sec. 18. Relates to meeting of City Council, tax and licenses.

Sec. 19. Orders the Council, once in every twelve months, before fixing and deciding upon the amount of taxes and licenses to be assessed for the issuing year, to make an estimate of the expenses.

Sec. 20. Relates to tax lien.

Sec. 21. Relates to taxes and licenses when due, and judgment for taxes.

Sec. 22. Relates to sale of property and redemption.

Sec. 23. Relates to contracts over $500.00.

Sec. 24. Relates to petition for banquettes.

Sec. 25. Relates to paving, opening and widening streets.

Sec. 26. Relates to repairs of banquette and streets.

Sec. 27. Relates to officers not to be interested in contracts, etc.

Sec. 28. Relates to weekly meetings of Council.

Sec. 29. Relates to bonds of administrators, and sureties.

Sec. 30. Relates to fiscal agent.

Sec. 31. Relates to the Secretary.

Sec. 31. Relates to the City Attorney, and also City Surveyor and six Recorders.

Sec. 32. Be it enacted, etc., That the right of the Mayor or any member of the Council to fill the office held by him may be tested at any time by any citizen by a writ of quo warranto, or his failure to fulfill and discharge the duties and obligations imposed upon him by this Act or the ordinances of the Common Council, by a writ of mandamus, which shall be tried by preference both in the District and Supreme Courts.

Sec. 33. Dispenses the City from giving bond and security in judicial proceedings.

Sec. 34. Relates to property of New Orleans vested in the newly chartered city, Jefferson property, Orleans right bank-property; proviso: Indebtedness of New Orleans to be paid by city as newly chartered. Indebtedness of Jefferson, indebtedness of Algiers, powers of old city vested in new. Powers of Jefferson. Powers of Algiers, prior ordinances.

Sec. 35 is missing, or rather omitted.

Sec. 36. Relates to statement of indebtedness.

Sec. 37. Relates to bonds to be cancelled.

Sec. 38. Relates to restoration of bonds.

Sec. 39. Relates to administrator of floating debt.

Sec. 40. Relates to powers and duties of such administrator.

Sec. 41. Relates to funding floating debt.

Sec. 42. Relates to statement of floating debt bonds.

Sec. 43. Relates to monthly payment of indebtedness, interest.

Sec. 44. Relates to consolidated bonds when fully paid.

Sec. 45. Relates to bonds exempt from seizure.

Sec. 46. Relates to repeal of Section 8 of Act 49 of 1869.

Sec. 47. Relates to limit of indebtedness.

Sec. 48. Relates to books, etc., to be delivered to Mayor and Council.

Sec. 49. Relates to officers of prior corporations not to act.

Sec. 50. Relates to diverting moneys.

Sec. 51. Relates to repeal of laws.

ACTS OF LOUISIANA FOR THE YEAR 1870.

No. 72.

For the Relief of the Officers and Members of the Metropolitan Police.

Whereas, Owing to the great opposition shown by the different city officials of the cities of New Orleans, Jefferson, Carrollton, Algiers, Gretna and the Parish of St. Bernard, the Metropolitan Police were forced to receive warrants for their salaries, instead of currency, as required by the law, thereby causing the said police to lose the enormous discount of thirty per cent on the dollar (30%); therefore,

Section 1st. Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That the Board of Metropolitan Police, (immediately after the passage of this Act), be and is hereby authorized to pay (in warrants) to each officer and member of said police

thirty per cent (30%) on each warrant issued to said officers and members of said police for the fiscal year of one thousand eight hundred and sixty-nine (1869), except those hereinafter named.

Sec. 2nd. Be it further enacted, etc., That the Metropolitan Police Board be and is hereby authorized to levy a special assessment on the different corporations comprising the Metropolitan Police District, for the purpose of paying said police the discount lost (in) (on) their warrants for the fiscal year of one thousand eight hundred and sixty-nine.

Sec. 3rd. Be it further enacted, etc., That any officer or member, who has not served on said police for six months during the year one thousand eight hundred sixty-nine (1869), or those who have been dishonorably discharged, or have resigned, shal not be entitled to any of said appropriation made in this Act.

Sec. 4th. Be it further enacted, etc., That in case of death of any officer or member of said police, his heirs shall be entitled to all the benefits of this Act for the year one thousand eight hundred sixty-nine.

Sec. 5th. Be it further enacted, etc., That all laws or parts of laws in conflict with this Act be and the same are hereby repealed, and this Act shall take effect from and after its passage.

(Signed) MORTIMER CARR,
Speaker of the House of Representatives.
(Signed) OSCAR J. DUNN,
Lieutenant-Governor and President of the Senate.

A true copy:
GEO. E. BOVEE,
Secretary of State.

Received in the House Thursday, March third, one thousand eight hundred and seventy, (Thursday, March 3, 1870).

The Governor having returned to the House, in which it originated, a bill entitled, "An Act for the Relief of the Officers and Members of the Metropolitan Police," with his objections thereto, the House proceeded, in pursuance to the constitution, to reconsider the same; and resolved that said bill do pass, two-thirds of all members present in the House agreeing to pass the same.

WILLIAM VIGERS,
Chief Clerk, House of Representatives.

Received in the Senate Thursday, March third, one thousand eight hundred and seventy, (Thursday, March 3rd, 1870).

And on the same day the Senate proceeded, in pursuance to the Constituion, to reconsider the bill entitled, "An Act for the Relief of the Officers and Members of the Metropolitan Police," which was returned to the House by his Excellency the Governor, with his objections, and sent by the House to the Senate, with the message of the Governor returning the bill; resolved, That the bill do pass, two-thirds of all the members present in the Senate agreeing to pass the same.

CHARLES MERRITT,
Secretary of Senate.

ACTS OF LOUISIANA FOR THE YEAR 1870.

Extra Session of 1870.

No. 94.

AN ACT

To order the payment and to provide the means for the payment of the estimate and apportionment of the expenses of the Board of Metropolitan Police(assessed and applicable to the cities, parishes and police juries within the Metropolitan Police District, and to more fully define the duties of the State Treasurer.

Section 1st. Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That the Councils of the cities of New Orleans, Jef-

ferson City and Carrollton, and the police juries of the towns of Algiers and Gretna, and of the Parishes of Orleans, Jefferson and St. Bernard, shall promptly pay and provide the means for the prompt payment of the proportion of expenses applicable to the said cities of New Orleans, Jefferson City and Carrollton, and the police juries of the towns of Algiers and Gretna, and of the parishes of Orleans, Jefferson and St. Bernard, according to the estimate and apportionments made by Board of Commissioners of Metropolitan Police, and which are now binding upon them.

Sec. 2nd. Be it further enacted, etc., That the said cities, towns, police juries and parishes shall promptly pay and provide means for the payment of all such future estimates and apportionments applicable to them, when such estimates and apportionments shall become binding upon them.

Sec. 3rd. Be it further enacted, etc., That it shall be the duty of the Treasurers of the Cities of New Orleans, Jefferson and Carrollton, and the Treasurers of the Parish of Orleans, right bank, Parish of Jefferson, right bank, Parish of Jefferson, left bank, and the Parish of St. Bernard, to pay over to the State Treasurer all sums of money received on account of the sum due and owing to the Metropolitan Police Board, within five days after the receipt of the same; and in the event of any of the aforesaid Treasurers failing to comply with the foregoing provisions, they shall be deemed guilty of misdemeanor in office, and shall be liable to a fine not exceeding five hundred dollars, or imprisonment not more than thirty days.

Sec. 4. Be it further enacted, etc. This relates to the duties of the State Treasurer towards the Metropolitan Police Board.

Sec. 5. Be it further enacted, etc. This relates to annulling certain ordinances unless the apportionments be paid.

Sec. 6. Be it further enacted, etc., That this Act shall take effect from and after its passage.

(Signed) MORTIMER CARR,
Speaker of the House of Representatives.
(Signed) OSCAR J. DUNN,
Lieutenant-Governor and President of the Senate.

Approved, March 30th, 1870.

(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy:
GEO. E. BOVEE,
Secretary of State.

ACTS OF LOUISIANA FOR THE YEAR 1872.

No. 73.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Asembly convened, That the Council of the City of New Orleans be and is hereby authorized and empowered to levy and assess a police tax, additional to all taxes levied in the month of December, 1871, for the purpose of defraying the police expenses of the year ending September 30th, 1872, and any deficiencies in the revenues of the City arising from the over-receipt of police warrants for City taxes.

Sec. 2. Be it further enacted, etc., That said levy shall be made and assessed according to the assessment rolls homologated by the City Council December 12th, 1871, which, for this purpose, and all future reference thereto, shall be denominated the assessment rolls for 1872; the City taxes levied December 19th, 1871, shall be denominated the taxes of 1872, and the licenses under Ordinance No. 1229, Administration Series, shall be denominated the licenses of 1872.

Sec. 3. Be it further enacted, etc., That the tax hereinbefore authorized shall not exceed one-half of one per cent. of the assessed valuation of the real, personal and mixed property, according to the said rolls.

Sec. 4. Be it further enacted, etc., That said levy be made, any provision of Section seven of Act No. 42 of 1871 to the contrary notwithstanding, which is hereby repealed so far as it may conflict with any provisions of this Act.

Sec. 5. Be it further enacted, etc., That the Administrator of Public Accounts shall, as soon as practicable after the passage of this Act, cause to be made out the bills required for the collection of the tax, which shall be signed by him, or a person or persons authorized by him to do so. Or he may consolidate the additional police tax herein authorized with the former city tax levies, and make and re-make bills for the same, either together or separately; all bills, whether of the present or said former levies for the year 1872, to be signed by the Administrator of Public Accounts, or by a person or persons authorized by him so to do.

Sec. 6. Be it further enacted, etc., That the said bills for additional police tax shall be collectable from March 1st, 1872, to July 31st, 1872, and exigible thereafter; and may be sued together with or separately from the other city taxes of the year 1872; Provided, No additional fee shall be allowed to the sheriff or clerk for the fact of there being separate bills for different levies of taxes or separate bills for different properties of the same persons; but the taxes of each delinquent may be embraced in a single suit, with but one fee to the clerk and sheriff for their respective services. No crier's fee shall be allowed in any tax suit hereafter.

Sec. 7. Be it further enacted, etc., That for the purpose of all city tax suits, whether for police or other purposes, and whether of one hundred dollars or over or under that amount, all or either of the district courts for the Parish of Orleans, excepting the First and Second, are hereby expressly invested with jurisdiction, and justices of the peace are hereby divested of such jurisdiction; Provided, The Second District Court may entertain jurisdiction of tax suits against successions.

Sec. 8. Be it further enacted, etc., That if at any time assessment made by or under authority of the Council of the City of New Orleans shall be declared or become void and

without effect by reason of non-compliance with any formality or requirements relative to the imposition of municipal taxes, then and in that case the Council shall have full authority and power, by ordinance or otherwise, to make a new assessment, thus becoming or being declared, null and void, and to place the tax bills or certified accounts in court and obtain judgment therefor, after publication for the length of time and in the manner provided for the collection of city taxes. It being the true intent and meaning of this law that the City of New Orleans shall not lose the right to collect annual taxes by reason or on account of any legal formality.

Sec. 9. Be it further enacted, etc., That no money shall be received or collected by the City of New Orleans, by any department, unless an order, bill or receipt for the same shall have been made out by the administrator of the proper department and signed or countersigned by him, or by some person authorized by him; and no receipt to any person for money, notes, or anything else taken by the city on account of revenue or any other account, shall be valid unless so signed or countersigned.

Sec. 10 Be it further enacted, etc., That it is hereby declared a felony to forge or falsely sign, fill up, alter or utter, or publish as true any bill, certificate, receipt, account, or any part thereof, as given, made out or signed by the Mayor or any administrator of department of the City of New Orleans, or by any officer, deputy, clerk or other person authorized by them, or either of them, and which may be given credence to, or pass, or be received as genuine or authorized, and be calculated to deceive or defraud any holder, receiver, transferree, pledgee or other person. Any person, upon being found guilty of such offense, shall be sentenced to imprisonment at hard labor not less than two nor more than twenty years.

Sec. 11. Be it further enacted, etc., That all taxes due and unsettled at the passage of this Act, or hereafter becoming due, are hereby declared to be a lien and privilege upon the property assessed for the same, to have priority over all other liens or privileges. And against all other properties of the

delinquent they shall have the force and effect of a lien from the date of their being recorded in the mortgage office as hereinafter provided.

Sec. 12. Be it further enacted, etc. This relates to register of taxes due.

Sec. 13. Be it further enacted, etc. This relates to unbonded debts, bonds or five hundred and one thousand dollars, exchange of bonds, matured bonds, bonded debt not to exceed twenty-three millions.

Sec. 14. Be it further enacted, etc. This relates to receipts and expenditures.

Sec. 15. Be it further enacted, etc., That the Council, after the adoption of the estimate, shal proceed to levy the annual taxes required, to-wit:

First—The city debt tax, which shall be based upon the detailed estimate of the sinking funds and interest falling due. For all bonds for which no other retiring provision exists by law, an estimate shall be included of not less than two nor more than ten per cent. of the face of the bonds outstanding of any of the several issues, which shall be applied to the retiring of bonds offered at the most advantageous rates, no bid to be accepted higher than par, and the right reserved to reject all bids. No limit other than herein laid down shall apply to this tax, which is hereby declared a vested right of the bondholders interested.

Second—A tax for current city expenses, including police and exclusive of interest and schools. This tax shall in no year exceed one and a quarter per cent. upon the assessed value of real, personal and mixed property.

These taxes shall bear the name of the year in which they shall be collectable, and the assessment upon which they shall be made shall be termed the assessments for the said year.

Sec. 16. Be it further enacted, etc., That no provision in any general law of the State limiting the power of taxation

by the general cities, towns, parishes and other corporations, shall be held to apply to any of the taxes of the City of New Orleans, herein or otherwise specially authorized to be levied.

Sec. 17. Be it further enacted, etc., That as soon as practicable after the passage of this Act, the Council shall proceed to the election of a chartered State or a National Bank, as Fiscal Agent of the City of New Orleans; and upon its election, acceptance and entering into due notarial contract, all present fiscal agencies shall cease, and their assets, duties and functions shall be transferred to the fiscal agency herein created. That the Administrator of Finance shall deposit with said fiscal agency, daily, all moneys collected by him from whatever source. That the Fiscal Agent shall set apart, and keep in separate funds, the sums of money deposited on account of the consolidated loan tax, and for the payment of the interest and principal of the various bonds issued and to be issued by the City of New Orleans, and such funds shall not be subject to the draft of any city official, but shall be a vested right of the bondholders. That under the direction of the commissioners of the consolidated debt, or of the Council, under existing laws, said Fiscal Agent shall purchase from time to time, before maturity, such bonds of the city as there may be funds in its hands to pay for, and shall cancel the same. In the event of interest coupons falling due previously to the collection and deposit of the taxes imposed for the payment of said coupons, it shall be nevertheless obligatory on the fiscal agency hereby created to pay said coupons on presentation, and any amount thus advanced shall be reimbursed to said agency out of the first taxes collected.

It shall have an agency in the City of New York (for the performance of duty by which it shall be responsible), for the payment of the coupons or redemption of bonds provided to be paid there. The fiscal agency hereby created may be changed and taken away by the Council by a vote of three-fourths of the members thereof, for cause; Provided, the same can not be removed, or the assets transferred without its consent, so long as the city is indebted to any fund or account, and until the fiscal agency is fully reimbursed, or so long as there shall remain any contract unexpired between it and the city.

Sec. 18. Be it further enacted, etc., That all laws or parts of laws in conflict with this Act be and the same are hereby repealed, so far as they are in conflict, and this Act shall have force and effect from its passage.

(Signed) O. H. BREWSTER,
Speaker of the House.
P. B. S. PINCHBACK,
President of the Senate.

Approved April 26th, 1872.

H. C. WARMOTH,
Governor.

ACTS OF LOUISIANA FOR THE YEAR 1875.

No. 16.

To enforce the payment, by the City of New Orleans, and the several cities and parishes of the Metropolitan Police District, of the apportionment made upon them by the Board of Metropolitan Police; to empower the said board in certain cases to negotiate a loan, to pledge the taxes levied for police purposes as security and to collect the said taxes in certain cases, prescribing certain penalties for a violation of this act, prescribing additional duties for the treasurer of the board; appropriating one hundred and thirty-five thousand dollars to compensate the members of the police force for services rendered to the State, and expenses incurred therefor by the board; and relating to the salaries of certain officers, and to reimburse the State for said appropriation, and to direct the manner of payment of salaries of certain officers and employes of the police when on detailed duty, and to change the fiscal agency.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That the total amount of the apportionment made by the Board of Metropolitan Police for any year against each and every parish and city belonging to and constituting part

of the Metropolitan Police District, shall be divided into twelve equal parts, one for each month of the current year, one of which parts shall be payable and collectable in full on or before the last day of each month as the pro rata of such apportionment for that month.

Sec. 2. Be it further enacted, etc., That it is hereby made the duty of the City of New Orleans, and of each and every city and parish constituting and making part of the Metropolitan Police District to pay to the Treasurer of the Board of Metropolitan Police on or before the end of every month the full amount of the pro rata of the apportionment made against such parish or city for the current year by said board that is payable and collectable for said month; Provided, that any excess of money over such pro rata that may have been collected shall also be paid to the said board.

Sec. 3. Be it further enacted, etc., That whenever the City of New Orleans or any parish or city constituting or making part of the Metropolitan Police District, shall refuse, neglect, or be unable to collect the tax by them or either of them levied to pay the apportionment made upon them or either of them by the Board of Metropolitan Police, so as to pay the full amount of the pro rata due for any month, on or before the last day of such month, as required by sections one and two of this Act, then, and in that case the Board of Metropolitan Police shall have authority to negotiate for and borrow such a sum of money as in the opinion of said Board shall be sufficient to pay the expenses of the Metropolitan Police Board for such time as the said Board shall deem necessary, such loan not to exceed in amount the apportionment made by said Board in accordance with law. And to this end the said Board of Metropolitan Police shall have the power to hypothecate and pledge to any person or persons, corporation or corporations, as security for such loan, the whole, or any part of the tax levied by such parish or city for the purpose of paying the apportionment made against such parish or city by the Board of Metropolitan Police for that year.

Sec. 3. Be it further enacted, etc., That whenever the City of New Orleans, or any parish or city making part of the Metropolitan Police District shall fail to pay the full amount of the pro rata of the apportionment against such parish or city for any month on or before the last day of the month for which such pro rata shall be payable and collectable, it shall be the duty of the Administrator of Finance of the City of New Orleans, or of the Treasurer of such other city or parish, upon the demand of the President of the Board ofMetropolitan Police, to forthwith transfer to said Board of Metropolitan Police all tax bills for the tax levied to meet the apportionment of the Board of Metropolitian Police for that year still remaining due and unpaid to such city or parish. Such Administrator of Finance or Treasurer shall also forthwith make out and render to the Board of Metropolitan Police a full and complete statement of the gross amount of the tax levied for that year for police purposes by such city or parish; also the statement of the total amount of said tax that has been paid to or collected by said parish or city up to the date of such demand, and also a statement of the rate per centum on the dollar of the tax so levied, and also a full, and accurate and complete list of the names of all taxpayers of such city or parish, which it shall contain, in suitable columns opposite each name, the amount of property assessed to each taxpayer on the assessment roll of such city or parish, the amount of the tax for police purposes levied on such assessment against each taxpayer, and whether such tax is paid or unpaid, which list shall be signed and sworn to as correct and true by said Administrator of Finance or Treasurer, as the case may be.

Sec. 5. Be it further enacted, etc., That immediately upon such failure and default in such payment by any such city or parish, and upon such demand made by the Board of Metropolitan Police the said Board shall cause public notice thereof to be given, by publication in all the principal newspapers of such city or parish for six consecutive days, if in a daily newspaper, or for two consecutive weeks, if in a weekly newspaper; such notice shall recite such failure and default in payment, and notify all persons owing such tax to pay the same to the

Treasurer of the Board of Metropolitan Police, and to no other person.

Sec. 6. Be it further enacted, etc., That from and after any default in payment of any monthly pro rata and demand made by the Board of Metropolitan Police, and publication of notice as hereinbefore provided it shall be unlawful for any official, of any city or parish constituting or making part of the Metropolitan District, to make or attempt to make any collection of said tax levied for police purposes. Any official of such city or parish who shall violate the provisions of this section shall be liable in damages to the Board of Metropolitan Police, or to any person who shall be interested in such tax as the security for any loan or loans negotiated or made as herein before provided, and the sureties upon his official bond shall be liable jointly with such official; and in addition to such damages, any official so offending shall be deemed guilty of a misdemeanor in office, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars and by imprisonment for not less than thirty days, or both, at the discretion of the Court.

Sec. 7. Be it further enacted, etc., That immediately upon the transfer by the Board of Metropolitan Police of the tax bills and tax lists as hereinbefore provided, all the taxes for police purposes by such city or parish, and still remaining due and unpaid, shall be payable to the Board of Metropolitan Police, and said Board shall have power to collect and receive the said taxes and receipt therefor in a similar manner and by similar processes and with similar penalties as are by law provided for the collection of city taxes, except as herein otherwise provided. The attorney of the Board of Metropolitan Police shall prosecute all suits brought in the name of the said Board for the collection of taxes, or in which the validity or collection of any apportionment is brought into question, and shall receive three per centum upon all moneys collected by such suits or legal proceedings on behalf of the Board.

Sec. 8. Be it further enacted, etc., That if the Administrator of Finance of the City of New Orleans, or the Treasurer of any other each city or parish, shall refuse or neglect to

transfer any tax bills or tax lists as above provided, such Administrator of Finance or Treasurer shall be deemed guilty of a misdemeanor in office, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars and by imprisonment for not less than thirty days, or both, at the discretion of the Court, and in addition thereto such official shall be liable in a civil suit for damages to the Board of Metropolitan Police, or to any person interested in any loan or loans negotiated or made as hereinbefore provided who shall suffer damage thereby.

Sec. 9. Be it further enacted, etc., That all taxes collected by the City of New Orleans, or by any city or parish of the Metropolitan Police District, for police purposes for the year 1875, shall be paid by such city or parish to the Treasurer of the Board of Metropolitan Police, and to no other person.

Sec. 10. Be it further enacted, etc. That the Treasurer of the Board of Metropolitan Police shall deposit all funds received by him for or on account of the Board of Metropolitan Police daily in some chartered bank, to be designated by the Board of Metropolitan Police. Such bank shall keep an account with the Board of Metropolitan Police, and all moneys deposited by the Treasurer shall be placed to the credit of such account.

Sec. 11. Be it further enacted, etc., That the Administrator of Finance of the City of New Orleans, and the Treasurer of each city or parish of the Metropolitan Police District, shall on or before 12 M., on the Saturday of each week, pay over to the Treasurer of the Board of Metropolitan Police all sums collected by him during that week for or on account of the tax levied for police purposes, and nothing in section one of this Act shall be so construed as to conflict with the provisions of this section.

Sec. 12. Be it further enacted, That as compensation for the services of the Metropolitan Police to the State of Louisiana the sum of one hundred and thirty-five thousand dollars be and the same is hereby appropriated, out of any money in

the State Treasury not otherwise appropriated, to the Metropolitan Police Board, to be used for the purpose of paying the pay rolls and expenses of the said Metropolitan Police Force, now due and unpaid for the months of October, November and December, 1874.

Sec. 13. Be it further enacted, etc., That immediately upon the passage of this Act the Auditor of Public Accounts shall, upon the order of the President and Treasurer of the Metropolitan Police Board, issue warrants for the amount of said appropriation upon the Treasurer of the State, in such sums as the Board of Metropolitan Police direct, and the receipt of said President and Treasurer of the Metropolitan Police Board shall be his vouchers for such issue. Said warrants shall be thereupon paid, after being by said President and Treasurer indorsed, to the members of the police force for the unpaid salaries and bills for the months of October, November and December, 1874.

Sec. 14. Be it further enacted, etc., That the officers and members of the Metropolitan Police Force detailed permanently with the Board of Health, as provided for by Act No. 14 of the extra session of 1870, approved March 16, 1870, shall be paid by the City of New Orleans in the same manner as the sanitary inspectors of the Board of Health are paid, and that the officers and members of the Metropolitan Police Force detailed to each municipal police court in accordance with the provisions of Act No. 95, approved May 17, 1873, shall be paid by the City of New Orleans in the same manner as the salaries of the judges and clerks of said courts are paid.

Sec. 15. Be it further enacted, etc., That the salaries of the members and officers of the police force shall be the same as are now prescribed by law, except as herein otherwise provided.

Sec. 16. Be it further enacted, etc., That so much of Section 4 of Acts No. 33 of the session of 1874, approved Feb. 26, 1874, as relate to the election and powers and duties of a

fiscal agent of the Board of Metropolitan Police, be the same is hereby repealed. The Treasurer of the Metropolitan Police shall be the fiscal agent of the board.

Sec. 17. Be it further enacted, etc., That the Attorney of the Board of Metropolitan Police shall receive a salary of three thousand dollars per annum, payable quarterly on his own warrant by the Treasurer of the Board of Metropolitan Police, out of any moneys in the treasury of said Board.

Sec. 18. Be it further enacted, etc., That all that remain of the tax levied by the City of New Orleans and each and every other city and parish of the Metropolitan District for police purposes, that shall remain delinquent and unpaid after the lien of the fiscal agent of said Board for that year on the same for loans made, shall have been satisfied and discharged, shall be paid by the said cities and parishes to the State Treasury, to reimburse the advance made by the State of the Board of Metropolitan Police by this Act.

Sec. 19. Be it further enacted, etc., That all laws or parts of laws contrary to or in conflict with this Act, be and the same are hereby repealed, and that this Act shall take effect from and after its passage.

(Signed) MICHAEL HAHN,
Speaker of the House of Representatives.
(Signed) C. C. ANTOINE,
Lieutenant-Governor and President of the Senate.

Approved March 24, 1875.
(Signed) WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

A true copy:
P. J. DESLONDE,
Secty. of State.

ACTS OF LOUISIANA FOR THE YEAR 1877.

No. 35.

AN ACT

To Repeal Act. No. 74, Approved September 14, 1868; Act No. 44, Approved February 27th, 1869; Act No. 87, Approved March 6th, 1869; Act No. 92, Approved March 8th, 1869; Act 94, Approved March 13th, 1870; Act No. 37, Approved March 5th, 1873; Act No. 64, Approved, March 26th, 1873; Act No. 33, Approved February 26th, 1874; Act No. 60, Approved March 17th, 1874; Act No. 16, Approved March 24th, 1875; and to authorize the City of New Orleans to establish, organize and maintain a proper and sufficient police force, to preserve order and good government within the corporate limits of said city, and to assume control of the Fire Alarm and Police Telegraph, and to pass ordinances providing for the control, direction and pay of the said police force, and to limit the annual expense of the same, and to establish a Board of Police Commissioners.

Section 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened, That Act No. 74, approved September 14th, 1868, entitled "An Act to establish a Metropolitan Police District and to provide for the government thereof;" Act No. 44, approved February 27th, 1869; Act No. 87, approved March 6th, 1869; Act No. 92, approved March 8th, 1869, entitled "An Act to amend and re-enact an act entitled "An Act to establish a Metropolitan Police District and to provide for the government thereof," approved September 14th, 1868; Act No. 94, approved March 13th, 1870, entitled "An Act to order the payment and to provide the means of the Board of Metropolitan Police, assessed and applicable to the cities, parishes and police juries within the Metropolitan Police Districts, and to more fully define the duties of the State Treasurer;" Act No. 37, approved March 5th, 1873, entitled "An Act authorizing the muster of the Metropolitan Police Force as a part of the militia of the State, authorizing the said force to

be increased when on militia duty to three full regiments, to be called the Metropolitan Brigade; authorizing the assignment of other officers and troops to said brigade, and providing for the enlistment, enrollment, pay and command of said Metropolitan Brigade;" Act No. 64, approved March 26th, 1873; Act No. 33, approved February 26th, 1874, entitled "An Act to amend and re-enact sections 15 and 27 of an Act of the General Assembly of the State of Louisiana, entitled an Act to amend and re-enact an Act to establish a Metropolitan Police District; and to provide for the government thereof," approved September 14th, 1868, approved March 8th, 1869, and for other purposes; Act No. 60, approved March 17th, 1874, and Act No. 16, approved March 24th, 1875, entitled "An Act to enforce the payment, by the City of New Orleans and the several Cities and Parishes of the Metropolitan Police District of the apportionment made upon them by the Board of Metropolitan Police and for other purposes," be and the same are hereby repealed; the said repeal to take effect from and after the passage of this Act.

Sec. 2. Be it further enacted, etc., That the City of New Orleans be and is hereby authorized and empowered, through the Mayor and Board of Administrators, to establish, organize and maintain a proper and sufficient police force, to preserve order and good government within the corporate limits of said city, and to assume the management and control of the fire alarm and police telegraph; Provided, The whole expense of said police force, fire alarm and police telegraph shall not exceed, and is hereby limited to the sum of three hundred and twenty-five thousand dollars per annum.

Sec. 3. Be it further enacted, etc., That said police force and fire alarm and police telegraph shall be entirely under the control and direction of the Mayor and Board of Administrators of the City of New Orleans, so far as the appointment and organization of the same is concerned, and that the said City Council shall provide therefor, by the passage of suitable ordinances, and shall also provide in said ordinances for the appointment of a Board of Police Commissioners; said Board shall consist of four commissioners, in addition to the Mayor

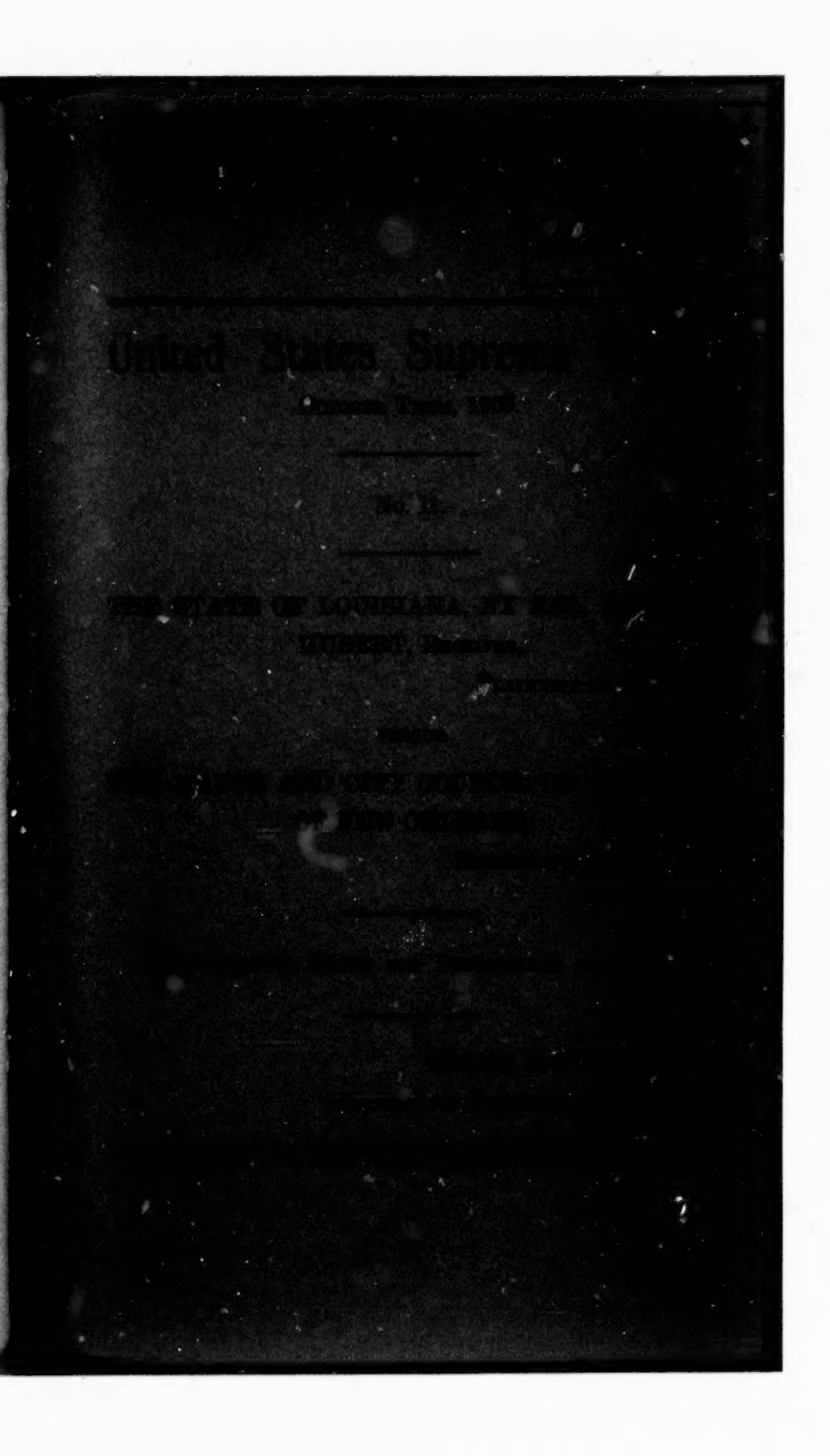
of the City of New Orleans, who shall be ex-officio a member and President of the Board, and the Administrator of Police of said city, who shall be ex-officio a member of said Board, to be chosen in the manner herein prescribed; and a majority of said Board shall constitute a quorum for the transaction of business. That the Mayor shall nominate, and, with the advice and consent of the Common Council, appoint the commissioners of said Board of Police; and the said commissioners shall hold office for one, two, three and four years, to be determined by lot; upon their appointment and at the expiration of the term of each of said commissioners, the Mayor shall appoint as aforesaid, a commissioner, who shall hold office for four years. The power of trying, removal or of suspension of any of the officers or patrolmen is exclusively vested in said Board, and it shall possess such other powers and perform such other duties as may be authorized and enjoined by the city administrators.

Sec. 4. Be it further enacted, etc.. That all laws or parts of laws, contrary to, or inconsistent with the provisions of this Act, be and the same are hereby repealed, and that this Act shall take effect from and after its passage and promulgation.

(Signed) LOUIS BUSH,
Speaker of the House of Representatives.
(Signed) LOUIS A. WILTZ,
Lieutenant-Governor and President of the Senate.

Approved March 31st, 1877.
(Signed) FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy:
WILL. A. STRONG,
Secty. of State.



United States Supreme Court.

OCTOBER TERM, 1909.

No. 11.

THE STATE OF LOUISIANA, *EX REL.* LOUIS A. HUBERT, RECEIVER,

PLAINTIFF IN ERROR,

VERSUS

THE MAYOR AND CITY COUNCIL OF THE CITY OF NEW ORLEANS,

DEFENDANTS IN ERROR.

SUPPLEMENTAL BRIEF FOR DEFENDANTS IN ERROR.

During the oral argument it was suggested by the Court that a line of authorities not quoted by either side in its brief seemed applicable to this case. The p recedent which appeared to impress some members of the Court was the case of *Ralls County Court vs. United States,* 105 U. S. 733.

In line with this decision two other cases were suggested—*Mobile vs. Watson,* 116 U. S. 289, and *Scotland County Court vs. United States,* 140 U. S. 41. In the verbal discussion of these cases before the Court counsel for defendants in error understood that these cases were suggested as establishing the doctrine that a tax is never levied and the levy thereof is never complete until the beneficiary of the tax has been paid.

An analysis of these cases will show that no such doctrine was established, or even considered, by this Court.

These authorities show that the main principle decided by the Court may be stated as follows:

Where legislative authority is conferred upon a municipal corporation or other subdivision of government to contract a debt of an extraordinary nature for a public purpose, and to issue in aid thereof negotiable bonds or securities, the legislative authority to contract carries with it necessarily the power to levy taxes with which to pay the obligation so created. This power is limited only by the act creating the obligation or by some general law in force at the time manifesting clearly an intention to limit the power of taxation.

Not one of the three cases touched the novel issue now presented to the Court.

They affirm a general doctrine laid down for the protection of contract creditors who have acted upon the faith of existing legislation in the purchase of negotiable securities issued by a government for a public purpose

under full legislative authority where the government has denied the existence of the authority to tax either because of a limitation or because such authority was claimed never to have been granted.

In none of the cases had the tax ever been imposed and collected, and in all of the cases the mandamus was sought to enforce original action by the debtor municipality.

The case at bar is quite different and somewhat novel in its features.

Here we do not deny the existence of the debt nor legislative authority to impose a tax to pay same.

It must be borne in mind, however, that we are dealing with two distinct corporations with different territorial jurisdictions, and that the debt was created and the warrants issued by one of these corporations—to wit, the Board of Metropolitan Police—and the tax was levied and collected by the other corporation—to wit, the City of New Orleans. We must bear in mind, further, that this debt was not for an extraordinary purpose, but was of an administrative character, and that the police warrants issued by the Police Board were not negotiable instruments, entitling them to the protection of the rule laid down in the *Ralls County Court case.*

The Court has to deal here with a case of a tax levied and collected according to law, and diverted by the City of New Orleans to public purposes other than those for which it was originally intended. The question is not

whether such diversion was right or wrong. This Court will not assume jurisdiction to remedy all governmental wrongs or to enforce justice in all cases. Its jurisdiction is limited, and it can only repair a wrong, governmental or private, where it has resulted from the impairment of a contract right guaranteed by the Constitution of the United States.

The crux of the question, therefore, seems to be: Was the diversion of these police taxes by the City of New Orleans the impairment of rights guaranteed to the holders of warrants issued by the Board of Metropolitan Police?

The City of New Orleans contends that the act establishing the metropolitan police system contains on its face a limitation of the powers of taxation for police purposes, which limitation was fixed at the sum apportioned annually by the Police Board.

The board and the city having acted each year, the functions of both were exhausted.

Every person dealing with the Police Board had knowledge, or is presumed to have known, of this limitation. If the city had failed annually to levy the tax, or had refused to collect it, such failure or refusal might have been an impairment of contract rights, which would have given creditors the right to invoke the jurisdiction of the Court. If the issue had been thus presented, the *Ralls County Court case* and kindred authorities might have beeen invoked against the city, and this Court would

have compelled the City of New Orleans to show affirmatively either the nonexistence of or a limitation upon the taxing power.

But the cases do not apply now because the city complied with her obligation to levy and collect the tax. It is true she did not maintain the integrity and separate identity of the police-tax fund as she could have been compelled to do by the creditors now complaining. She mixed these police taxes with her other funds and used them for other governmental purposes. A misapplication, due as much to the inaction and laches of the Metropolitan Police warrant-holders as to her own necessities at the time, was thus brought about.

The concrete question presented now, after the lapse of more than thirty years, is narrowed down to this proposition: Was this misapplication of funds by a government an impairment of a right in a sense that it brings the case under the limited jurisdiction of this Court? We cannot deny that it was a governmental wrong, but it was condoned and acquiesced in by those whom the plaintiff in error now represents. The fact that it was a governmental wrong does not necessarily make it an impairment of any contract rights.

To bring the case within the jurisdiction of this Court your Honors must find a contract between the City of New Orleans and the holders of Metropolitan Police warrants, and an impairment of that contract by some subsequent legislative enactment or judicial decree.

The City of New Orleans made no contract with persons dealing with the Board of Metropolitan Police, and was never a prime debtor of these police warrants. No holder of these warrants could ever have sued the city *ex contractu*, nor could the present receiver have brought suit against the city upon the warrants themselves.

The judgment which he recovered, and which now forms the basis of the relief sought, was founded upon a cause of action for the recovery of moneys received by the City of New Orleans. This judgment was not based upon any contract obligation of the City of New Orleans, either expressed or implied. If the Board of Metropolitan Police had never been abolished the board itself could not have sued the city upon the police warrants, because these warrants were the obligations of the board itself, and were never the obligations of the city.

The only obligation of the city was towards the board, and, the board having been abolished, no creditor or receiver of that defunct body could sue the City of New Orleans upon the warrants issued by the board. In order to bring this case within the jurisdiction of this Court the plaintiff in error has attempted to fasten upon the City of New Orleans the status of a contract debtor of these Metropolitan Police warrants, and, having done so, his complaint is that the decision of the Supreme Court of Louisiana, refusing to place the City of New Orleans in the position of a contract debtor, has impaired rights guaranteed to the warrant-holders by the Federal Constitution. If this Court can be convinced that the City

of New Orleans was not a contract debtor of these warrants, no case of impairment can arise which would give this Court jurisdiction. The City of New Orleans might well be a debtor of the Police Board or its creditors under the obligation to account for and pay over police taxes collected and not used for police purposes, and in this position a judgment against the city may properly have been rendered.

It is not clear, however, that the City of New Orleans was ever a party to or connected with contracts between the Police Board and its creditors, either expressly or by legislative enactment.

The Court will have to examine the act of 1868 to ascertain whether a legislative contract was created to which the City of New Orleans was made party.

In the case of *New Jersey vs. Yard,* 95 U. S. 114, this Court has said:

> "It may safely be said that in far the larger number of cases brought to this Court under that clause of the Constitution the question has been as to the existence and nature of the contract, and not the construction of the law which is supposed to impair it; and the greatest trouble we have had on this point has been in regard to what may be called legislative contracts—contracts found in statute laws of the State, if they existed at all."

The Court will find the same difficulty in the present case. The plaintiff contends that the obligation imposed upon the City of New Orleans to levy and collect a police

tax constitutes a legislative contract between the board and the city which is protected from being impaired by the Constitution.

Section 29 of Act No. 74 of 1868 of the acts of Louisiana says:

> "The Common Councils of the City of New Orleans, Jefferson City and Carrollton, etc., are hereby respectively empowered and directed annually to order and cause to be raised and collected by the tax upon the estates, real and personal, subject to taxation according to law within the said cities and towns the sums of money, as aforesaid, annually estimated and apportioned as the share of such cities or parishes of the said total expenses of the Metropolitan Police Districts."

In this legislative direction the plaintiff discovers a legislative contract imposed upon the City of New Orleans. The Supreme Court of Louisiana held that this legislative direction imposed no obligation upon the City of New Orleans which would make that city a party to any contract between the Police Board and its creditors. Does the fact that the city was to levy the tax make it anything more than the debtor of the Police Board for taxes collected and not paid over? Why should the city be brought within the domain of contracts between the Police Board and its creditors? Her sole duty was to furnish to the board its alimony by means of taxation.

It is not alleged, nor is it a fact, that any subsequent legislation or decree of any Court changed this obligation. As a matter of fact, the city realized the taxes, but

diverted them, and thereby became an ordinary debtor of the Police Board. Upon this ordinary debt for taxes received and diverted suit was brought and judgment obtained against the city.

The plaintiff is attempting to bring this judgment under the impairment clause of the Federal Constitution by seeking to impose upon the City of New Orleans a privity or a legislative contractual relation towards the creditors of the Police Board. His only support for this contention arises out of the fact that State legislation made it the duty of the city to furnish alimony to the board. Is this fact a sufficient warrant for the deduction of the plaintiff that the city thereby became a party to the contracts of the board? Is it not just as reasonable to contend that the obligation of the city to furnish alimony to the board and her failure so to do resulted in the ordinary relation of debtor and creditor? It seems to counsel for the city that this is the fallacy of plaintiff's position.

His counsel has failed to cite any authority showing that a default of a taxing body under such circumstances brings such taxing body within the domain of a contract to which it was not originally a party.

The equities are certainly not with the warrant-holders, who rested supinely during the years these taxes were being levied and collected, and who had adequate remedies at that time to protect the police-tax fund as it was realized; but they are with the people of New Orleans, who have already paid this tax.

This Court should hesitate, after the lapse of so many years, to grant the relief plaintiff seeks unless this case is shown to be one clearly within its jurisdiction. This cause cannot come under this jurisdiction unless the obligation of a contract has been impaired. The City of New Orleans having never been party to any contract, no case has been made out under the Federal Constitution, and these proceedings should, therefore, be dismissed.

Respectfully submitted,

FRANK B. THOMAS,

Counsel for Defendants in Error.

Office Supreme Court, U. S.
FILED.
MAR 22 1909
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. [redacted] 11.

STATE *EX REL.* L. A. HUBERT, RECEIVER, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND COUNCIL OF NEW ORLEANS.

STIPULATION OF COUNSEL.

It is admitted by counsel for relator and defendants, that the assessment rolls of the city of New Orleans for 1909 will amount approximately to the sum of two hundred and twenty million dollars.

CHS. LOUQUE,
For Relator.
FRANK B. THOMAS,
For Defendants in Error.

WASHINGTON, D. C., *April* 15, 1909.

CIVIL DISTRICT COURT

PARISH OF ORLEANS

DIVISION "A"

NO. 73173.

OPINION.

Filed May 19, 1905.

LOUIS A. HUBERT, RECEIVER,

versus

CITY OF NEW ORLEANS.

REASONS FOR JUDGMENT.

The amounts, collected by the City of New Orleans, for account of the Metropolitan Police tax and retainer, I find to be as follows:

1869	Tax collected	$ 2,564.52
1870	" "	4,703.68
1870	Interest on taxes collected	97.90
1871	Tax collected	10,185.11
1871	Int. on tax collected	20,333.95
1875	Tax	6,924.27
1873	Int. collected	17,557.24
1874	" "	19,214.25
1875	" "	12,009.97
1876	" "	9,415.50
1877	1/4 Budget $499,000—124,750 less credit amt. paid $108,191.16	
	Balance of tax collected	16,558.84
1877	Int. collected	3,910.34
	Amt. of tax and interest, collected by sheriff and retained for his fees under City Ordinance	12,607.05
	Total	$136,082.62

The above settlement is proved by the books of the City and the testimony of the experts appointed to examine the same and by the books and evidence of officers, in the sheriff's office.

The evidence direct is and positive and shows the City to be indebted to the holders of warrants and claims, against said tax funds represented by the Receiver, in the aggregate amount above stated, for tax and interest collected and not paid over.

After the evidence for the plaintiff had been taken, the City caused an examination to be made, by experts selected in its behalf, of the books and accounts of the City and their report and evidence was subsequently put in the record and it is upon their report and testimony that I find the amounts hereinbefore stated.

The Metropolitan Police ceased to exist April 1, 1877, Act 1877, E. S. 57. As it served in this City during January, February and March 1897, I apportion to the account of said police, for 3 months, or 1/4 of the year and reach the result shown in the table of figures given for 1877.

The ordinance found in Jewell's Digest, p. 530, 531, par. 2, which divested the interest, from the tax found for this account, to pay the fees of the sheriff for collecting taxes, was an unlawful division of funds, otherwise dedicated, by the law of the State, and was a violation of Arts. 140-169 of the Constitution, of 1879, and the City is responsible for the amount thus diverted, $12,607.05, already stated. The case Harrison vs. City, 40 A 409, was a case of defalcation on the part of the sheriff, and is not applicable as authority to the instant case.

On the issue of when interest began to run, I find that judicial demand was made on these claims Apl. 3, 1890. See records 11899 U. S. C. Court, E. Dist. of La., Harrison, Receiver, vs. City of N. O., and 1251 U. S. Court of Appeals, 5th Circuit, Hubert, Receiver, vs. City of N. O., interest must run from that date, R. C. C. 1911, P. 2, 1935; 1912 C. P. 554; 91 Fed. Re. 574, and 180 U. S. 185.

The prescription pleaded cannot avail. The City was trustee of this tax fund and litigation has been constantly pending against it, to enforce payment. It was, moreover, on the City's initiation, that a Receiver was finally appointed for this fund, to collect from the City and to hold and disburse the same, to those holding claims against it.

Britten's case 106 La. 469; St. Romes case 20 A 383, 109 La. 110; R. C. C. 3510, 1 Rob. 41, 12 Rob 536, 2A 927, 10A 580, 14A 238, 30A 800.

The capacity and authority of the receiver extend to the collection and settlement of the entire Metropolitan Police tax funds made heretofore, or to be made hereafter. His functions include all that said tax may yield, or may have yielded and to the settlement of all claims against it.

The various orders of appointment and employment of powers show this. See State Ex. Rel. Brittin vs. City, 106, 469.

The City pleads res judicata the suit and judgment of Harrison, Receiver, vs. City, reported 40A 510. That suit was for collections made for 1874, 1875, 1876. The Supreme Court adjusted the account and fixed $30,994.94 as the amount then due by the City. It appears from the Records that this judgment (of date May 10, 1888) was paid by the City. The plaintiff here claims for collections made for said years (1874, '5, and '6), but he is not claiming the collections involved in that suit.

The tax has been in process of collection, each year since, i. e., back unpaid taxes have been collected. The evidence shows that the amounts here claimed have not been paid, and that the City has credit for all that has been paid. This is not the case of a plaintiff claiming less than is due and failing to augment his demand. The City owes as she collects this fund and the collections have been progressing, year by year. What the City is now required to pay is the amount of tax collections, which were not involved in that suit (40A 510).

Nor does the City show, that, the amounts found by the experts and shown by the books to have been collected for this tax, or any parts of the balance first above stated, have been paid, or settled for. The balance found herein decreed gives all credits to which the City is entitled.

The liability of the City for collections of this tax and its duty to pay same over to the Receiver are no longer open questions.

The legislation of the State and the jurisprudence have placed all the issues here beyond discussion.

See Acts 1868 No. 74, p. 85, 1870, 84-74-102; Ex. Sep. 213; 1872, 124; 1873, 76, 120; 1874, 68, 108; 1875, 35. Ex. Sep. 10; 1877, 27. Ex. Sep. 57.

See also 106 La. 469; 109 La. 110, 694; 40A 509; 43A 829.

For these reasons the defendant's pleas of prescription, payment and res judicata are overruled and the plaintiffs awarded judgment for $136,082.62, with interest from April 3, 1890, and costs.

N. O., La., May 18th, 1905.

(signed) T. C. W. ELLIS, Judge.

JUDGMENT.

Civil District Court for the Parish of Orleans, Division "A."

Louis A. Hubert, Receiver,

vs. No. 73173.

City of New Orleans.

For the reasons assigned in the written opinion of the Court, this day delivered and filed.

It is ordered, adjudged and decreed that the defendant's pleas of prescription, of payment and of res judicata, be overruled.

It is further ordered, adjudged and decreed that there be judgment in favor of plaintiff, Louis A. Hubert, Receiver of the Board of Metropolitan Police as such Receiver, and against the City of New Orleans, for the sum of one hundred and thirty-six thousand and eighty-two 62/100 dollars ($136,082.62) with legal interest thereon from April 3rd, 1890, until paid and costs.

Judgment read and rendered May 19th, 1905, in open Court.

Judgment signed in open Court June 9th, 1905.

(Signed) T. C. W. ELLIS, Judge.

UNITED STATES OF AMERICA.

STATE OF LOUISIANA.

SUPREME COURT OF THE STATE OF LOUISIANA.

I hereby certify the foregoing to contain a true extract from the record of the proceedings had in the Civil District Court for the Parish of Orleans, in a certain suit wherein L. A. Hubert, Receiver, was plaintiff, and the City of New Orleans was defendant, which record is on the files of this Court under the Number 15877.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at the City of New Orleans, this the 14th day of October, Anno Domini, 1909, and of the Independence of the United States of America the one hundred and thirty-fourth.

Chas. Louis Fellman

CLERK.